

United States

Circuit Court of Appeals

For the Ninth Circuit.

Apostles.
(IN FOUR VOLUMES)

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Appellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation, Claimant of the
American Steamship "BEAVER," Her En-
gines, etc.,

Appellee.

VOLUME IV.
(Pages 1105 to 1482, Inclusive.)

Upon Appeal from the United States District Court
for the Northern District of California,
First Division.

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(Testimony of James Dickie.)

Q. And when the vessel was going under a 15-knot speed? A. I would believe him.

Q. You would believe him? A. Yes.

Q. And yet these other vessels facing a wind of 65 knots and a head sea would lose three-quarters of an knot an hour, or one of them—that is correct, is it not? A. About a knot and a quarter an hour.

Q. That is correct, is it?

A. That is correct. But conditions are altogether different. If the “Beaver” was deeply [939—815] loaded she would not go down to 5 knots, unless the captain chose to bring her down. If he was afraid of getting the stuff washed off the decks and he stopped* his engines she would go down.

Q. And if she was light she would go down?

A. Yes.

Q. And the lighter she is the more likely she is to go down—that is true, is it? A. Yes.

Further Redirect Examination.

Mr. McCLANAHAN.—Q. You say that you would believe the captain of the “Beaver,” Mr. Dickie, if he had made the statement that a wind and sea condition would reduce the speed of the “Beaver” from 15 to 10 knots?

Mr. DENMAN.—5 knots.

A. If the “Beaver” had been extremely light, I have been out on this coast myself when I think it would do it.

Mr. McCLANAHAN.—Q. That would depend on

*Page 816, line 3, the witness Dickie contends that the word “stopped” should be “slowed.”

(Testimony of James Dickie.)

the kind of sea and the amount of wind?

A. If you get the wind strong enough and the sea big enough it will bring him down. If you give me the height of the sea I will give you probably about what he would come down.

Mr. DENMAN.—Q. You never have experienced that exact thing?

A. I have travelled a good deal and I have always observed and I have always kept a log.

Q. But you never have been on the “Beaver” when she was going into exactly the kind of sea she had that day?

A. I don’t know what the sea was that day. They say it was calm, with a long swell.

Q. You know how high that swell was, don’t you?

A. No, I don’t know how high it was. If you can tell me how [940—816] high it was I can tell you how long it was.

Q. I don’t doubt that. Now that that has been worked out it is a simple calculation.

A. If you can tell me how long it was I can tell you how fast the swell was apparently going and I will tell you how much motion your pendulum had and I will tell you how hard it hit the cliff.

Q. Then you admit it might hit the cliff hard?

A. Yes, but it did not hit the ship the same way.
[941—817]

[Testimony of William W. Broaddus, for Claimant.]

WILLIAM W. BROADDUS.

Mr. McCLANAHAN.—We will waive the administering of the oath to Mr. Broaddus.

(Testimony of William W. Broadus.)

Mr. DENMAN.—Q. What is your occupation?

A. Freight clerk now on the steamship "State of California."

Q. Were you on the "Beaver" at the time of the collision with the "Selja"? A. Yes, sir.

Q. Where were you just prior to the collision?

A. In my room, on the "Beaver."

Q. Do you recollect whether you heard any whistles prior to the collision?

A. Yes, I heard one blast of a whistle.

Q. From another ship?

A. From another ship, yes, sir. I heard one blast, followed shortly afterwards by three blasts from our own whistle; and then previous to that I heard our own whistle blowing.

Q. What happened after you heard the three blasts from your whistle?

A. I heard three blasts of the whistle and then I felt the screw beginning to go astern under me so I ran out on deck to see what was the trouble.

Q. Did you see the "Selja"? A. I did, yes, sir.

Q. Whereabouts was she when you saw her, what direction from you?

A. I went over to the starboard side of the ship and looked forward and she appeared to be over about there.

Q. What do you mean by "over about there"—on your starboard side? A. Yes, sir.

Q. Where was she lying when you saw her?

A. She was lying right across our bow, at right angles.

(Testimony of William W. Broaddus.)

Q. At right angles across your bow?

A. Yes, right dead ahead. [942—818]

Q. Where was she lying with refernce to the sea?

A. She looked to me to be about in the trough of the sea.

Q. Do you recollect whether you heard the three whistle signal from her, or not?

A. I don't know whether I did or not, I did not hear any before we blew three blasts. As to whether she blew any after that, I could not say.

Q. She might or she might not?

A. She might or she might not; I did not hear them.

Q. How long was it before the vessels came together?

A. As near as I could judge time at that time it was fully a minute or more.

Q. That is, after you saw her? A. Yes.

Q. Did you notice the angle at which you struck?

A. I think her head had fallen away a little bit.

Q. Did you notice the angle of impact between the two vessels? Do you recollect what that was?

A. No, sir, I do not.

Q. Where did you go after the collision?

A. As soon as we struck, I had hold of the hand-rail, and as soon as the vessels came together I went forward to see what damage there was. I started up for the bridge, and the First Officer ordered all hands to lower away the boats, and I started to help lower away the boats and after the boats started over the

(Testimony of William W. Broaddus.)

side I went up on the bridge to the captain to ask him if he wanted to send any messages ashore.

Q. Did you pay any particular attention to the course of the two vessels after that?

A. No, sir, I did not. I saw the "Selja" list—that is all, I saw her list over, and then I went from there to the engine-room and to my own room to send [943—819] a message that Captain Kidston gave me and when I came out again she was standing on her head.

Cross-examination.

Mr. McCLANAHAN.—Q. You were the wireless operator, on the "Beaver"?

A. Yes, I was operator and freight clerk.

Q. Where was your room situated?

A. My room was the last room aft on the ship.

Q. On what side?

A. Neither side; it was in the middle. There is a room on the starboard side, a room on the port side, and my room was in the middle of the deck-house aft right over the screw.

Q. Right over the screw?

A. Yes, it must have been, as near as any of them could be over the screw.

Q. Could you hear the screw working.

A. Yes, sir.

Q. From your room? A. Yes, sir.

Q. What were you doing in your room at the time? A. Making freight bills.

Q. And while there you could hear the screw working?

(Testimony of William W. Broaddus.)

A. I could know when the screw was in motion, yes, sir.

Q. Did it make a noise?

A. Well, not noise enough that I could not hear my wireless work when I was working that, but I could tell it was working, especially when the ship was going astern; there is more vibration then than when she is going ahead.

Q. How far is that from the bridge aft?

A. Well, I don't know the exact number of feet. The bridge is a little forward of amidships on the "Beaver" and I was in the stern.

Q. A couple of hundred feet aft, was it? [944—820]

A. Well, I should judge it would be that far, I guess.

Q. Which way did your door open, aft or to one side? A. It opened out.

Q. Aft? A. Yes, sir.

Q. It opened toward the stern of the ship?

A. Yes, sir.

Q. And your window in the room opened that way also?

A. My window went up and down, as I recollect it now.

Q. But when you looked out of your window you looked aft over the stern of the ship?

A. Yes, sir.

Q. There were no apertures on either side of the room? A. No.

Q. Just the door and the window, which were both aft? A. Yes, sir.

(Testimony of William W. Broaddus.)

Q. You said that when you last saw the vessel she seemed to be in the trough of the sea?

A. To the best of my knowledge.

Q. How long did you keep your eye on her?

A. Well, I did not stand and watch her. I saw that we were going to strike her and I stood until we hit.

Q. But while you did watch her she was in the trough of the sea?

A. She looked to me to be that way.

Q. The swell that was on that day must have been a very long swell if she remained in the trough of the sea for any appreciable length of time?

A. I don't know anything about that. I was in my room working and I don't know what the swell of the sea was.

Q. You did not notice that at all?

A. No, sir. I cannot give anything exact as to that because I had lots to do after she struck.

Q. My thought is this: that if you saw her at one time in the [945—821] trough of the sea she must have at a later period arisen to the crest of the sea and she moved on; you did not see her do that?

A. I did not see her do that.

Q. While you looked at her she remained in the trough of the sea?

A. I looked at her and when we struck her I left.

Q. You did not see her at any time on the coast of the swell?

A. I could not swear as to that.

Q. Well, can you swear that you saw her in the trough of the sea?

(Testimony of William W. Broaddus.)

A. I said she looked to me to be in the trough of the sea.

Q. There was not very much sea on, was there?

A. There could not have been. If there was a sea there could not have been much sea on—there was no wind.

Q. How far did she appear to be from you?

A. You mean when I first saw her?

Q. Yes.

A. Well, she was a good ship's length and a half or two.

Q. Was she going forward or astern?

A. When I saw her she was going neither forward nor astern.

Q. You noticed that, did you?

A. I noticed that. I called the attention of a passenger who was standing alongside of me on the deck, I said, "Why don't he go either forward or astern, he is not moving." He was not moving. His screw was not moving either fore or aft.

Q. You recognize that if your ship was swinging at that time either to port or starboard your judgment as to whether the "Selja" was at rest would be faulty, would it not?

A. I noticed in particular that her screw was not turning [946—822] either way. If her screw had been turning I would have noticed it.

Q. And you noticed that her screw was not turning?

A. There was no motion in the water and I called the attention of this passenger, I said, "Why don't

(Testimony of William W. Broaddus.)

the damned fool go ahead or astern. Look at him, he is standing still."

Q. Did you see your boat swinging at that time, or was she keeping her course?

A. Just before we struck her I don't think she was keeping her course; she had not headway enough.

Q. I am talking about the time when you first saw the "Selja," was she keeping her course then?

A. I don't know what course she was steering.

Q. Well, whatever it was, was she keeping it?

A. I could not say as to that, whether she was keeping her course, or not. She was naturally going ahead, but I could not judge.

Q. You could not judge whether she was swinging to port or to starboard, or whether she was keeping in a straight course when you first saw the "Selja"? A. No, sir.

Q. You did not take notice of that?

A. I did not take notice of that, no, sir.

Mr. DENMAN.—Q. You were the wireless operator on the ship? A. Yes, sir.

(An adjournment was thereupon taken until Friday, July 28, 1911, at 10 A. M.) [947—823]

Friday, July 28th, 1911.

[Testimony of James Dickie, for Claimant
(Recalled—Cross-examination).]

JAMES DICKIE recalled for further cross-examination:

Mr. DENMAN.—Q. Mr. Dickie, at the last examination, Mr. McClanahan referred to some exper-

(Testimony of James Dickie.)

iments that had been made in regard to the time it would take to stop ships being launched at the Union Iron Works; what is the launching distance there, the maximum distance?

A. The distance we stopped in, if my recollection serves me right, was 785 feet. It was a total motion of 785 feet; that is, the stem was 785 feet away from the position it started from when it stopped; and my recollection is it was 35 seconds from the maximum velocity—35 seconds to stop.

Q. And in those launching operations the vessel carries a portion of the cradle with her, does she not? A. Yes.

Q. And she is also held back by ropes?

A. Yes. But the cradle is so small that it is almost negligible.

Q. And you also restrain the velocity by the use of ropes? A. yes.

Q. The ropes break as you go along—is that the arrangement?

A. Yes; you put them in such condition that it takes a long time for them to break. You make them long so as to get the time worked in. If you made them short they would break too quickly, they would go like fire crackers.

Q. You were able to stop your biggest ship in 35 seconds?

A. Yes, from the maximum velocity. That great big one—the “Olympia”—was 78 seconds; her speed would be probably about 13 knots. [948—824]

(Testimony of James Dickie.)

Q. 13 knots. You mean when she started?

A. No, at a maximum velocity.

Q. At maximum velocity her speed is about 13 knots?

A. Probably about that. I don't know. I did not see it.

Q. But you had mechanical methods for arresting her speed so that you could stop her in about 68 seconds?

A. Stop her in about 40 seconds, from her maximum velocity.

Q. Those are the only experiments in stopping vessels that you yourself have observed, are they not?

A. The ones I made myself are the only ones I have seen, further than records; there are only two people I know of who have taken the records,—Denny of Dumbarton and Harlem Wolf of Belfast, Ireland. Those are the only ones I have seen. The machine that we made is the only one of its kind that I know of. We lost it twice before we got one to operate right; it made a beautiful record, one of the prettiest records in the world.

Further Redirect Examination.

Mr. McCLANAHAN.—Q. Mr. Dickie, I think you said that if you knew the height of the swell into which the “Beaver” was going you could tell how much it would retard her speed; is that correct?

A. I could give you a very close approximation to it.

(Testimony of James Dickie.)

Q. How high would the swell have to be in order to break on the Potato Patch, assuming that there are 24 feet of water there? A. About 4 feet.

Q. What would a 4-foot swell retard the speed of the "Beaver"?

A. Very little. I did not take 4 feet into cognizance; I took from 5 to 6 feet into cognizance, and that is about seven-eighths of a knot. [949—825]

Q. That is, you did not take a 4-foot swell into consideration, but you did take a 5 or 6 foot swell into consideration?

A. Yes, and I figured the stern going up about 18 feet.

Q. In a 5 or 6 foot swell? A. Yes.

Q. And the retardation would be what?

A. About $\frac{7}{8}$ of a knot.

Q. Is that a liberal allowance or is that a close figure?

A. That is a liberal allowance; it would be under it rather than over it.

Q. What is the cause of that retardation—the swell itself?

A. The swell itself is a small portion of it. The inefficiency of the propeller when it comes out is the largest portion,—the loss of horse-power due to that. I would like to mention here that it represents about 560 horse-power, the loss of $\frac{7}{8}$ of a knot in the speed of the "Beaver" at that speed.

Q. You remember Mr. Denman asking you a question in which the experience of the captain of the "Beaver" was contained, where he said that from

(Testimony of James Dickie.)

15 knots the "Beaver" dropped to 5 knots?

A. Yes, sir.

Q. You remember that question, do you, and you said you would believe that? A. I believed it.

Q. Did the question contain the revolutions at which the "Beaver" was going at 15 knots?

A. No.

Q. Would there have been under such a dropping of the speed any change in the revolutions of the engines? A. Most decidedly.

Q. Could the speed drop unless there had been a change in the revolutions of the engines? A. No.

Q. What would have been the situation if the speed did drop and the revolutions of the engines were not changed? [950—826]

A. I think the engine would go to pieces. Let me put that in another shape—if the steam was not shut off.

Q. If the steam was not shut off the engines would go to pieces?

A. The engines would go to pieces.

Q. So that when you assumed the feasibility of the proposition of the "Beaver" dropping from 15 to 5 knots, you assumed that there was some change in the power of the engines?

A. I assumed that the speed was let down to prevent the engine from running off.

Further Cross-examination.

Mr. DENMAN.—Q. Suppose the wave is 7 feet high, how fast does it travel?

A. I don't remember that.

(Testimony of James Dickie.)

Q. Have you calculated it? When did you last calculate it?

A. I just merely look at the book for these things; I don't keep them in my head. I just look at the book. I don't calculate them at all.

Q. Does not the rapidity with which the wave moves determine the frequency with which the wheel would be exposed?

A. No. The amount that is exposed, I took about 10 per cent of the total time exposure. That represents it. If the swell is long you are longer out, and if the swell is short you are a shorter time out, so it does not make any difference.

Q. You mean to say you have calculated it and determined that the relationship is exactly the same, the longer the time the longer it is out, and the shorter the time the shorter it is out?

A. No, there is nothing exact about a sea.

Q. Why do you compute it at 10 per cent?

A. You have to make certain assumptions; the first assumption is that the stern will go up and down about 18 feet; that is an assumption based upon evidence from other vessels. It is [951—827] an extreme assumption. It is more than she would actually do. I think if you put the captain on the stand he will say she was not going up and down 18 feet. But I have taken an extreme—you have to assume something.

Q. Not if you are operating in the scientific way you described at the last session, you would take nothing as assumed but you would simply go ahead

(Testimony of James Dickie.)

on the data that is given you. I understand you are assuming and did assume in this question a certain rate of exposure? A. Yes, sir.

Q. How much of the wheel would be exposed if it went up and down 18 feet?

A. A little over half of it, at the extreme exposure.

Q. How much of the time would the half of it be exposed?

A. That would be just a fraction of the time, a very small fraction of the 10 per cent of the time. Ten per cent would represent about an average exposure of it, an average exposure of about a quarter of the wheel.

Q. Ten per cent would be an average exposure of what?

A. Of about a quarter of the distance; divide that again in two and you get 10 per cent.

Q. Now, let me see; that would mean that every wave it would pass it would expose it that much?

A. No, if the ship throws up and the wave passes, sometimes the wave passes and don't expose the wheel at all; the wave just happens to hit under the ship while the wheel is up. Sometimes the wave does not affect the wheel at all. Sometimes it will pass clear and it will be more exposed.

Q. But it will everage about one for every passage of the wave?

A. No, not for every passage of the wave; the ship has a certain period she pitches in and she won't pitch outside [952—828] of that period no matter

(Testimony of James Dickie.)

what the fact is; for instance, it is the same as rolling.

Q. What was the period of pitch on the "Beaver" at that time? A. I don't remember it.

Q. You don't remember it—did you ever know it?

A. No, I just assumed it.

Q. How do you come to assume a fact in this scientific investigation when you have not determined what the thing actually is?

A. Because you must assume something. For instance, the 18 feet is assumed, the height of the sea is assumed. The whole thing is an assumption. If these things are so, then the other things are so; if they are not so, then the other is not so. The biggest factor in the thing is, that it takes 560 horse-power, which is a known thing, to make the difference—to account for the $\frac{7}{8}$ of a knot for that speed of the "Beaver"—about 15 knots.

Q. What you did, then, was to assume it went $\frac{7}{8}$ of a knot and then found your horse-power?

A. No, found the horse-power first.

Q. How are you going to determine the horse-power unless you know the height of the wave and the pitch?

A. There is no trouble about the horse-power; the horse-power is a fixed thing due to certain speeds.

Q. I don't mean that, I mean the horse-power lost.

A. You have to put these things down and interpolate them together.

Q. Let me ask you again: the rate at which the wave travels will determine, of course, the number

(Testimony of James Dickie.)

of exposures the wheel will have, will it not?

A. No. [953—829]

Q. Will it have anything to do with the number of exposures?

A. It will have a little to do, but not much.

Q. Won't it have a great deal to do with it? If it travels very fast will it not be exposed more often than if it travels slowly?

A. Then it will be exposed a shorter time.

Q. And if it is exposed a shorter time—

A. (Intg.) I was wrong in that figure 560; it should be 650 horse-power for $\frac{7}{8}$ of a knot.

Q. That is very easy to calculate, is it not? Anybody can calculate that? A. Yes.

Q. Assuming that it was $\frac{7}{8}$ of a knot, it would be 650 horse-power? A. Yes, sir.

Q. And if you take it the other way, if it were 650 horse-power, it would be $\frac{7}{8}$ of a knot?

A. Yes.

Q. The unknown thing is whether or not it was one or the other on that voyage?

A. Well, I did not say that exactly, I said about $\frac{7}{8}$ of a knot; I have to make an assumption there. And as to that, when I say "about $\frac{7}{8}$ " I mean that it is about that, that that is as near as we can figure it; but when I say "650 horse-power" that is calculated, due to these conditions.

Q. Suppose the wave is a very long wave, such a wave as would be produced by 15 feet of height; then suppose again that the waves were only 2 feet in height; of course, the 2-foot waves would pass more

(Testimony of James Dickie.)

frequently than the 15-foot waves? A. Yes.

Q. But you say it would produce the identical effect on the propeller? A. I did not say that.

Q. Well, practically the identical effect on a propeller? [954—830]

A. If there was the same amount of exposure it would be the same.

Q. But there will not be the same amount of exposure, will there?

A. If the ship is pitching at say an average of about 18 feet the exposure will be about the same.

Q. Would she be pitching at an average of 18 feet if the wave was only 2 feet high?

A. No, not if it was only 2 feet high.

Q. You said if the wave is smaller it will go faster and therefore the amount of exposure will be the same; now, I am asking you if it is 15 feet high in one case and 2 feet in the other would you have the same exposure of the propeller?

A. No, you would not have the same exposure.

Q. Then it does vary very much according to the height of the wave?

A. Yes, it does vary very much.

Q. And if you stated to the contrary of that in your testimony you want to have it corrected?

A. I don't understand what you mean.

Q. I say if your testimony has been to the contrary of that you want to correct that testimony, don't you?

A. Yes. I was assuming that the wave was 5 or 6 feet high and the ship made 18 feet pitch. And I

(Testimony of James Dickie.)

think I am taking an extreme wave for that day and I think I am taking the extreme pitch for that day.

Q. Were you there? A. No.

Q. Then it is not correct to say that the rate at which the wave passes through the water has nothing to do with the amount of exposure?

A. I don't understand you.

Q. Then it is not correct to say that the rate at which the wave passes through the water has nothing to do with the amount [955—831] of exposure of the wheel?

A. The vertical motion up and down is the largest factor in the thing.

Q. The number of times that the vessel will be exposed to that vertical motion up and down is dependent upon the rapidity with which the wave moves?

A. It depends upon the rapidity with which the ship pitches.

Q. If the ship were perfectly still and the wave passed by would she not still have her propeller exposed by the movement of the wave, without any pitching? A. Yes.

Q. The rapidity with which the wave passes the ship has an effect on the amount of exposure, has it not—in 5 minutes?

A. On the time of exposure.

Q. Take a 5-minute period, and presuming that the wave is proceeding at one rate, and then presuming that the wave is proceeding at a lower rate than that, will not the wave proceeding at the higher rate

(Testimony of James Dickie.)

expose the wheel more than the wave proceeding at the lower rate? A. It should not.

Q. Why not?

A. Because if the wave is proceeding at the lower rate the time exposure will be longer than at the higher rate and it will just about balance itself.

Q. So she would be no more affected by a wave 2 feet high than by—

A. (Intg.) I did not say that.

Q. (Continuing.) One moment. Let me get through: Assuming that a vessel is not pitching, she would be no more affected by a wave 25 feet high than she would by a wave 15 feet high?

A. I did not say that or indicate that.

Q. How do you account for your statement that the amount which the propeller would be exposed would be just as much over [956—832] a certain period of time, presuming the vessel to be, not pitching whether the wave is 3 feet high or 15 feet high?

Mr. McCLANAHAN.—I don't know what bearing it may have on the answer, but I don't think that he assumed that the vessel was not pitching.

Mr. DENMAN.—You will find that in the former question.

A. I cannot understand that question.

Q. We will presume that the vessel is not pitching at all—

A. (Intg.) You are on a wrong premise to start with, if you are going to have waves.

Q. I want to get at the various factors; I want to eliminate the pitching factor for the present. Pre-

(Testimony of James Dickie.)

sume she is not pitching; presume that the waves are 15 feet high, and that the vessel goes through them for 5 minutes at a certain speed of the vessel. Now, again, presume that the vessel is not pitching, that the waves are 2 feet high, that she goes through them at the same speed of the vessel; would the exposure of the propeller, so far as that exposure will reduce speed, be the same in both those cases?

A. I cannot conceive that question. I cannot conceive it. It won't fit into my mind. You will have to put it in another shape. It won't fit in.

Q. Now, frankly, Mr. Dickie, don't you know there are two factors? Haven't you to admit that there are two factors in retarding the ship, one of the factor produced by the pitching and the other factor produced by the movements of the wave even when she is not pitching? Suppose that the wave catches her and passes her propeller at a moment when she is not pitching, when she is on an even keel—not only on an even keel but that she is trimmed even—will there not be some exposure of the propeller? [957—833]

A. If the wave drops to the stern, yes, there will be an exposure.

Q. That is, presuming she is horizontal to the ground? A. Yes.

Q. There will be an exposure? A. Yes.

Q. Now, can't you conceive of that continuing?

A. No, I cannot conceive of that motion alone; it could not exist.

Q. Well, conceive it for a moment; that is a factor that continues right along, is it not? A. No.

(Testimony of James Dickie.)

Q. That is the norm from which the pitching raises or lowers the amount of exposure, is it not?

A. I do not understand the question.

Q. I say that is the norm—the average—condition from which the pitching raises or lowers the amount of exposure?

A. I don't catch what you are driving at at all.

Q. It is not what I am driving at, Mr. Dickie; this is not an argument, this is an examination.

Mr. McCLANAHAN.—The witness does not understand the question.

The WITNESS.—Let me get it on paper and see if I understand it. (After making sketch.) That is what you mean, is it?

Q. Suppose the vessel continues through the water without any pitching, that her wheel is just awash; she continues on that horizontal position without pitching, and a 2-foot wave comes along and exposes a little bit of the wheel?

A. A little bit of the wheel.

Q. But very often? A. Yes. [958—834]

Q. A little bit of the tip of the wheel, and very often? A. Yes.

Q. Then a 15-foot wave comes along and exposes the wheel very much more but not so often?

A. If it exposed the same amount of surface it would be the same.

Q. If it does—but does it?

A. If the multiple of the little one was equal to the multiple of the big one that would be practically the same thing.

(Testimony of James Dickie.)

Q. It would be practically the same thing?

A. Yes.

Q. In other words, there is no such thing as a reduction at all by exposure of the wheel because if it is only exposed an inch that will come so often, or if the wave is only 6 inches in height that will make it so often that it will make the exposure just as bad as if the wave was 15 feet in height?

A. If it only came once an hour, yes.

Q. But will it come once an hour?

A. Yes, if the multiples of the two things are the same, they will only come once an hour.

Q. Well, are they the same?

A. I say if they are the same.

Q. Well, do you believe they are the same?

A. I don't know. How can I tell?

Q. Then you are not in a position to say that a small wave would retard the vessel just as much—

A. (Intg.) I never indicated that.

Q. When you come to examine your testimony when it is written up you will find that there is no other conclusion to arrive at from what you said.

A. You can arrive at another conclusion. You are talking about a different thing. I say [959—835] if the propeller is exposed 4 inches once a minute and 40 inches once in 40 minutes, the result would be practically the same.

Q. Do you mean 40 inches on the circumference?

A. No, I am talking of 40 square inches.

Q. Forty square inches?

A. Yes, you have to get it in square inches.

(Testimony of James Dickie.)

Q. As you go down the radius of the propeller does it expose it in that same proportion?

A. We will take the disc area, if you want to.

Q. It is the disc area that counts, is it not?

A. Yes, but you must get it into square inches. It must be got into square inches.

Q. Six inches at the hub of the wheel would make a great deal more difference than 6 inches at the tip, would it not? Six inches vertically would make a great deal more difference than the amount of exposure of the wheel than 6 inches at the tip?

A. Do you mean 6 square inches?

Q. No, 6 inches vertical drop.

A. Oh, that is a great deal different. I am talking of the quantity of the wheel that is exposed.

Q. Were you talking about the height of a wave—3 feet and 15 feet—and the amount of wheel exposed by dropping her 15 feet as distinguished from a wave of 3 feet. That is what we have been talking about, Mr. Dickie, and nothing else. You said it would be the same?

A. I said it would be the same if the multiple of the square inches is the same.

Q. Then is it the same? You know it is not the same as you go down the radius?

A. I know it is not, but if time exposures bring up the multiple of the small thing to the large [960—836] thing, then it would be exactly the same.

Q. Have you ever computed that?

A. That does not need any computation.

Q. Will it bring it up to the same?

(Testimony of James Dickie.)

A. Practically; it will be very close to it.

Q. Have you ever calculated that to see?

A. I know it.

Q. Have you ever calculated that to see?

A. No, but I know it.

Q. That is one of those scientific judgments you make? A. It is a scientific judgment.

Q. Now, I have gotten where I want; you do not say then that on account of the increase of the rate of the 3-foot wave that it will at the end of 5 minutes retard the vessel just as much as the 15-foot wave, and that—

A. (Intg.) I don't get at the meaning of your question.

Q. (Continuing.) I have not finished it yet.

A. Oh, go ahead.

Q. (Continuing.) Just as much as the 15-foot wave, presuming the vessel is not pitching, and presuming she is going through the water at the same speed for the two heights of wave; do you get the question now? A. No.

Q. Read it to him, Mr. Reporter.

(Question read by the Reporter.)

A. That question just seems to me to be a jumble of nonsense; I can't make head or tail of it.

Q. Whenever a question comes to a conclusion that is adverse to your client I notice that it becomes objectionable to you.

Mr. McCLANAHAN.—Now, Mr. Denman, I object to that remark.

The WITNESS.—And I object to it. [961—837]

(Testimony of James Dickie.)

Mr. DENMAN.—Well, let me finish. The reason is that I have not had the chance of working this thing out with you, as your client has, and getting at the drift of your meaning. I have put these questions to you after I have had a series of preliminary questions as the matter appears to me. It seems that whenever I come to a point where I desire to summarize that I am not able to make it clear to you.

Mr. McCLANAHAN.—I object to this statement as entirely uncalled for. I don't believe there is a man present at this hearing who understands Mr. Denman's question. If there is I would like to have him speak up.

Mr. DENMAN.—I think Captain Lie does. He has followed every word of it.

Mr. McCLANAHAN.—Do you, Captain Lie?

Captain LIE.—No, indeed, I do not.

Mr. McCLANAHAN.—Do you, Mr. Page?

Mr. PAGE.—Yes, of course I do.

The WITNESS.—Well, let him answer it.

Mr. DENMAN.—I will put the question to you again: Now, presuming that your vessel, in both the instances I am going to cite, is travelling at the same number of revolutions—

A. (Intg.) You are bringing revolutions in now; that was not in before.

Q. Well, I will put them in now.

Mr. McCLANAHAN.—He is going to clarify the question.

The WITNESS.—Oh, he is going to clarify the question. That is another element now.

(Testimony of James Dickie.)

Mr. DENMAN.—Q. Presume now, that the vessel is proceeding, in both the instances I am going to cite, at the same number [962—838] of revolutions of the propeller. I eliminate the factor of pitching. Presume that in the two instances the vessel proceeds for the same length of time. Presume that in the first instance the wave is 3 feet high and in the second instance that it is 15 feet high. Will the amount of retardation due to height of the wave be the same in both cases?

A. No; that is, do I understand you to mean will a 3-foot wave retard it the same as 15-foot wave?

Q. Yes. A. No.

Q. It took me a long time to get that far with you, Mr. Dickie.

A. That was not the question before at all.

Q. It came pretty near to it? A. It did not.

Q. What is the ratio of those two—the 3 and the 15-foot?

A. The direct ratio is 5, but not an area of the wheel.

Q. What is the difference in the area of the wheel of the “Beaver”?

A. I don't know; I have a rough method of figuring it: If you take the square of the diameter and take off one quarter, you will get the area pretty nearly.

Q. For the 15 feet? A. 17 feet.

Q. Take a square of the diameter and take off a quarter.

A. I cannot figure the partial area—the eclipse; I

(Testimony of James Dickie.)

cannot figure it without the book.

Q. Have you ever figured it for the "Beaver"?

A. I have figured it hundreds of times.

Q. I say, have you ever figured it for the "Beaver," for the partial—what do you call it, what is the technical term there?

A. Part of the segment of the circle?

Q. Yes; of the segment of the circle; have you ever figured it? [963—839] A. No, not directly.

Q. Have you ever figured it for 6 feet, of the "Beaver"? A. No.

Q. Or 5 feet? A. No.

Q. Or 3 feet?

A. No. I told you at the beginning I assumed 10 per cent of the time.

Q. You assumed 10 per cent of the time?

A. Yes.

Q. Now, as I understand it, all vessels that are contracted for are contracted to make a certain speed under what are known as trial-trip conditions?

A. Yes.

Q. Did you ever contract to build a ship in which there was anything in the contract about the effect of a heavy sea upon the propeller? A. No.

Q. So that calculations as to the effect of waves in reducing the speed of a vessel are not part of the commercial end of your business? A. No.

Q. I understand you to say that you had certain data in certain of these computations you have made that you had gotten from United States Naval Officers? A. As to stopping of vessels, yes.

(Testimony of James Dickie.)

Q. And you said you preferred that to the data of merchantmen, did you not?

A. I prefer it on account of its being more accurate.

Q. Then you would say that Naval Officers are more accurate observers than the merchantmen?

A. They are, generally speaking, more accurate.
[964—840]

Further Redirect Examination.

Mr. McCLANAHAN.—Q. Mr. Dickie, I think I will venture one more question even at the risk of its leading to another long cross-examination. Would it make any practical difference as far as the retardation of the “Beaver” is concerned—this after $\frac{7}{8}$ of a knot retardation—whether she was headed into the swell or going with the swell?

A. No appreciable difference. It might make the one one-thousandth part of a knot difference, but it would not be over that; and let me put in one thing, I mean without wind; I mean the swell *per se*—the swell itself.

Further Recross-examination.

Mr. DENMAN.—Q. You think the swell that hits the cliff and wears it away would not have any effect on the bow of the vessel?

A. I could write a book as big as a box would hold and explain it to you. But it is a long process. It is very simple as to what hits the cliff, but it is very hard to explain. It fits into my mind just as simply as rolling off a log.

Q. And so it does into mine.

A. But it is not what you think it is at all. Sup-

(Testimony of James Dickie.)

pose the swell travels at 20 knots an hour, and there is no wind, and you turn your ship first the one way and then the other, there is no appreciable difference in the speed of your ship whether you are going against the swell or with the swell, not the slightest sign.

Q. Presuming a ship going at 20 knots?

A. I don't care what speed you were going at. If the sea is going at 20 knots, which is a common speed for a sea, it is not an extraordinary speed, a wave travelling 20 knots an hour [965—841] is not extraordinary.

Q. How fast would a long swell travel?

A. I don't remember the exact figure. It is the multiple of its length. I don't remember the figure for it just now, but it runs in my mind that a 20-knot sea is quite a common thing.

Q. As a matter of fact, you have heard of 40-knot seas? A. I have heard of 40-knot seas.

Q. And the greater rapidity with which the wave travelled, of course, gives a greater frequency of exposure of the wheel? A. No.

Q. It does not?

A. No, because the wave is longer; the speed of a wave is due to its length.

Mr. McCLANAHAN.—Have you not exhausted that subject, Mr. Denman? That has nothing to do with my simple, poor little question that I asked.

The WITNESS.—No, he would not exhaust that subject in a month. I remember a discussion that took place in the Santa Barbara Channel one time

(Testimony of James Dickie.)

among some naval officers, as to speed; one of the naval officers accounted for a difference by saying that the earth was not a perfect circle, and he figured out that there was 2 inches difference in 40 miles, and he said that made a difference in the speed of the ship. How it made it, I don't know, and to what extent it made it I don't know. If you bring up questions like that you will never get through.

Mr. DENMAN.—I think Mr. McClanahan is right, that my question is more pertinent to other portions of your testimony than the last question brought out. That is all, thank you.

The WITNESS.—If you choose to read into my testimony—you objected yesterday that I did not have the displacement of [966—842] the ships. I have since looked up the relative displacements of the “Majestic” and the “Siberia” and the “Beaver.”

Q. There is quite a difference, is there not?

A. There is quite a difference, but that is very easily figured—it is very easily taken into account; it is very simple. There is one thing that did not astonish me, although it would astonish you probably; for instance, the “Majestic” takes 2100 horse-power for a knot and a quarter up to 20 knots, and she is 16,485 tons displacement. Then I took another fast one, the “Belle Machree,” and she took 2050 horse-power for a knot and a quarter and 24 knots, and she is only 3353 tons displacement. You will see that it is practically the same. I merely introduce that to show you that these things are resolvable into figures if you can get the facts. If the Captain

(Testimony of James Dickie.)

will testify to the pitch of the ship, I will get very close to the reduction in speed.

Mr. DENMAN.—Mr. McClanahan yesterday asked for the statement of Judson. This statement was given to me by the agent of the claimant and is, I take it, a privileged communication; however, as we have waived our privilege in regard to the statements made by Captain Kidston to us, also Ettershank, also the testimony of our stenographer, and if Mr. McClanahan still wants to inquire further into that, he can have the statement.

Mr. McCLANAHAN.—I will take your statement that the written statement signed by Judson is the same as the statement which was read from the stenographic book of your stenographer.

Mr. DENMAN.—No.

Mr. McCLANAHAN.—Then I want the written statement. [967—843]

Mr. DENMAN.—And I will state also, in order that you may further clear up the matter, I will waive any privilege I have of my own and will submit to such examination as you may want in regard to this statement, and perhaps I can give you some facts that would add to those you already have.

Mr. McCLANAHAN.—We introduce the statement in evidence and ask to have it marked Libelants' Exhibit 22.

Now, Mr. Denman, what about the data we have asked you for—how about the stipulation in regard to it?

Mr. DENMAN.—Do you desire any further exam-

ination into what transpired in my office in regard to this statement?

Mr. McCLANAHAN.—Mr. Denman, if I wanted to examine you, I would say so. You have suggested that twice now in the record. For what purpose I do not know. You have told me that twice now.

Mr. DENMAN.—I did not think you would understand the purpose of it. Mr. Derby does understand, of course.

Mr. McCLANAHAN.—Mr. Derby is a man of understanding. But, seriously, now, what about that data?

Mr. DENMAN.—I am not prepared at this time to admit that the deductions which you draw from that data are correct.

Mr. McCLANAHAN.—Do you really understand what I want?

Mr. DENMAN.—As I understand it, what you want us to do is to admit that the data contained in the blue-prints which were furnished by the contractors to the owners in order to show that the contractors had complied with the contract, that that data will sustain the statements that were made the basis of the expert questions put to Mr. Dickie.

Mr. McCLANAHAN.—That is not what I want at all. I want [968—844] you to admit that if the builders of the “Beaver” were called they would testify as to the draught of the “Beaver” on the trial trip, and as to her displacement at that draught, as being the same which is the basis of my hypothetical question. That data appears on the blue-prints

which have been furnished to the owner of the "Beaver" by the builders, and it seems to me a very simple admission for you to make—that her draught and the displacement, as shown by our hypothetical questions, which correspond with the draught and the displacement as shown on your plans furnished by the builders, is the draught and the displacement which if the builders were called they would testify to.

Mr. DENMAN.—Yes, we admit that.

Mr. McCLANAHAN.—That is all we want.

Mr. DENMAN.—We do not desire to admit any of the facts that appear on the blue-prints—that is, any of the other facts, only the draught and the displacement at that draught.

Mr. McCLANAHAN.—That is all I have asked for.

Mr. DENMAN.—Now, we rest, subject to the right to cross-examine Captain Lie further, and to meet any matters that may be put in in rebuttal.

Mr. McCLANAHAN.—Of course, you have the right to meet any new matters that would be put in on rebuttal.

Mr. DENMAN.—Well, any evidence on existing matters. I do not suppose there can be any new matter put in now. If new evidence comes in, we will have to meet it.

Mr. McCLANAHAN.—Well, whatever your rights are, cannot be changed.

(A recess was here taken until 2 P. M.) [969—845]

(Testimony of Olaf Lie.)

AFTERNOON SESSION.

Mr. McCLANAHAN.—I understand that the claimant wishes to recall Captain Lie for further cross-examination. I think, in order to save time, I will ask Captain Lie some further questions myself on the question of damages. He is going away and this evidence which I am now going to introduce will not be used until a reference has been made to the commissioner.

Mr. DENMAN.—You can start in on your case and I will have my cross-examination all in one bite.

Mr. McCLANAHAN.—No. You said you wanted to further cross-examine him on the evidence already in.

[**Testimony of Olaf Lie, for Claimant (Recalled).**]

OLAF LIE, recalled for further examination:

Further Direct Examination.

Mr. McCLANAHAN.—Q. When was the “Selja” contracted for?

A. In the latter end of April or the first of May, 1907.

Q. When was she completed?

A. On the 7th of November, 1907.

Q. Where was she built?

A. West Hartlepool, England.

Q. By whom? A. William Gray & Company.

Q. What is she classed in Lloyds’?

A. 100 A-1 Special Survey.

Q. How is that special survey designated in Lloyds’? A. With a star behind the A-1.

Q. What style of type of ship is the “Selja”?

(Testimony of Olaf Lie.)

A. She is a common cargo boat, called the spar deck.

Q. Have you seen other vessels of her type?

A. Yes, sir.

Q. Is there any difference between the "Selja" and the ordinary common cargo steamer that you have seen? [970—846]

A. No, not except that she was very well equipped with discharging gear and also with her holds; that is to say, the quarter stanchions on each hatch were taken away in order that they might not interfere with the lumber and, therefore, she had to get stronger beams; stronger beams in the way of hatches.

Q. What was the condition of the "Selja" on the day of the collision as compared with her condition when she was first built?

A. Well, my opinion of that is that she was nearly as good as she was when she was built.

Q. Were you continually on her from the time she was built until she sank? A. Yes, sir.

Q. Were you present during the trial trip?

A. Yes, sir.

Q. Were you there at any time during her construction? A. Yes, sir.

Q. What was done by you as master of the "Selja" to keep up her condition?

A. Well, as a rule you keep her in the same order as much as you can; that is to say, you scrape and paint wherever you see any rust. You open her bilges, tanks, and everything and overhaul them and look after her and see that she is kept in good order.

(Testimony of Olaf Lie.)

Q. Was that done on board the "Selja" by you?

A. Yes, sir.

Q. How often was she docked?

A. About every six months.

Q. What was done with her when she was docked?

A. Cleaned and painted—the bottom of her.

Q. Were any repairs ever made to the "Selja"?

A. Yes, sir.

Q. What were they?

A. They were some average repairs to her bottom.

Q. What did the repairs consist of?

A. Taking out a few plates and renewed them and put them in again in the same order. [971—847]

Q. Was the value of the ship at all affected by these repairs?

A. No, sir; she was also in the special survey during these repairs and classed the same in Lloyds' after her repair was completed.

Q. Captain, have you a blue-print of the plans under which the "Selja" was constructed?

A. Yes, sir.

Q. Please produce them. Are these the plans that you refer to (indicating)? A. Yes, sir.

Mr. McCLANAHAN.—We offer the plans in evidence and ask that they be marked Libelants' Exhibit No. 23.

Q. Do you know the cost price of the "Selja," Captain? A. Yes, sir.

Q. What is it?

Mr. DENMAN.—Q. Do you know of your own knowledge?

(Testimony of Olaf Lie.)

Mr. McCLANAHAN.—Q. How did you get the knowledge, Captain? A. From the builders.

Mr. DENMAN.—We object to it upon the ground that it is hearsay.

Mr. McCLANAHAN.—We will put it in for what it is worth.

A. 45,792 pounds. When you asked for repairs there is something I forgot; when the ship was 18 months old we put in a new winch in her, sent from England to Hongkong.

Q. Was that an additional winch from the one that was on the ship when she was constructed?

A. Yes, sir.

Q. The one that was on the ship when she was first constructed was still in use?

A. Yes, we simply placed two when there was one before.

Q. Then that was an additional winch?

A. Yes, sir.

Q. That is hardly a repair?

A. No, it is hardly a repair. It was put on her.
[972—848]

Further Cross-examination.

Mr. DENMAN.—Q. Captain Lie, you testified on your former examination that you had never heard that the fog affected the direction from which whistles came. You recollect that testimony, do you not? A. Yes, sir.

Q. You have read these notes of the International Marine Conference, at Washington, have you not?

A. I read some of it, yes.

(Testimony of Olaf Lie.)

Q. Some of this discussion concerning fog, and the adoption of this rule we have in dispute here—you read that portion of it, did you not?

A. Yes, I read some of that regarding Article 16.

Q. Do you recollect reading the statement of Mr. Flood? Mr. Flood was the delegate from Norway at this conference, was he not?

A. Yes, I think he was.

Q. Did you read this:

“Sometimes in a heavy fog you can hardly hear the whistle. I have seen, when the fog partly lifted, the steam come up from the steam-whistle on the port side and I have heard the sound come up on the starboard side; the sound has gone around and followed the openings in the atmosphere and come up on the starboard side. Every practical seaman will agree with me that when he has expected to find a fog signal on the starboard quarter he has often found it on the port quarter.”

Do you recollect reading that language in there?

A. Well, I don't say I recollect reading it; I think I have read it but I don't recollect reading it.

Q. So you were incorrect when you stated you never had heard of that peculiarity of sounds in the fog being commented on? [973—849]

A. I never have experienced it.

Q. No, I asked you whether you ever had heard of it in your experience at sea and your answer was you never had?

A. I don't think I understood the question.

(Testimony of Olaf Lie.)

Q. As a matter of fact, you had read this book at the time and read this statement of your countryman?

A. I don't think I said I never heard of it; I said I had never experienced it.

Q. Whatever you said was incorrect if you did state that you had not heard before that the sounds in the fog have travelled in many prospective ways?

A. Well, if I said that I had not heard of it I would say that it is not absolutely correct, no, but I never experienced it myself.

Q. You have heard of it very often, Captain Lie, have you not? A. No, sir.

Q. Did you ever hear of it anywhere else than in this book? A. Never.

Q. Only in that book? A. Yes.

Q. Was it not taught in your nautical school?

A. No, sir, not that we could hear a whistle, when we hear it on the port side that we thought it was on the starboard side.

Q. I am not asking you that now: was it not taught you in the nautical school, that the sound of whistles was deflected by a fog?

A. No. The only thing they were teaching about it was that if a whistle is badly located on land it may be deflected there, but I never heard it was deflected in the fog itself.

Q. You never heard that? A. No. [974—850]

Q. You are sure it was never taught in your school?

A. No.

Q. Who were the professors in your school?

(Testimony of Olaf Lie.)

A. They were educated—

Q. (Intg.) Who are they? What are their names?

A. Captain Bergeson is the head man of the Nautical School in Norway. He is a naval officer.

Q. Who else were you under at that time?

A. Well, Captain Hoff was one. I don't remember the names of them now.

Q. You cannot remember who your instructors were there?

A. There were many instructors; we had 6 or 7 of them.

Q. You cannot remember now but those two names at this time?

A. Well, that was passing as master, passing as mate I had a man by the name of Oaien.

Q. You never heard while in the Nautical Schools, that the location of a vessel from another vessel at sea in the fog was a matter of uncertainty due to the effect of fog on the sound of the whistle?

A. No, sir, not the location, but that the sound would not be heard as far under certain circumstances as others again, so we had to be careful before we heard the whistle—that is to say, when you made a point, or anything like that, you could not always rely upon the whistle before you heard it.

Q. How do you mean you could not rely on the whistle before you heard it?

A. That is to say, if you are making a point you cannot be sure you will hear that whistle before you run the point, but as soon as you pick it up—I never

(Testimony of Olaf Lie.)

had any difficulty whatsoever as soon as I picked up the whistle; then I am safe. [975—851]

Q. About how many points off your bow was the "Beaver" as she approached you in the fog, as you now have discovered?

A. About a point and a quarter.

Q. A point and a quarter?

A. Yes. She proved to be that.

Q. That is, when she came in sight?

A. No, not when she came in sight. She was then about 2 points.

Q. Did the lookout report that fact to you? Did he agree with you on that? A. When?

Q. When she came in sight; did the lookout agree with you on that?

A. I do not think I paid any notice to what the lookout said when she came in sight.

Q. As I understand it at that time your claim is you went astern about 100 feet from the point where you first saw her?

A. Well, I would not say the number of feet, but I said perhaps she would do it; of course, I would not say.

Q. It might be 150 feet?

A. No, I do not think it is 150, although I could not say. It is hard to say how many feet she did travel astern.

Q. What was the course of the "Beaver" through the water, figuring it out from the testimony you have here now, at the time you first saw her? As I understand it, when you first saw her you said that the

(Testimony of Olaf Lie.)

three whistles had just blown? A. Yes, sir.

Q. What was the course of the "Beaver" at that time?

A. I did not see her course at that time.

Q. I know that, but computing it from the evidence you have here now. You remember you have computed a great deal from Captain Kidston's evidence, have you not? A. Yes.

Q. Now, computing it from the evidence of Captain Kidston and the other officers on the "Beaver," and taking into consideration [976—852] her ordinary course on the coast, what direction was she sailing in at the time you saw her, just as the three whistles blew on her?

A. Oh, she must have been heading on the course as Captain Kidston said, somewhere around west I should say.

Q. Well, let me see—half a point is how many degrees? A. $5\frac{3}{4}$ — $5\frac{7}{8}$.

Q. About 6, is it not, in round figures?

A. 6 degrees, yes, sir.

Q. So she would be about 2 south of west?

A. Yes, 2 degrees south of west.

Q. And a quarter of a point is how much?

A. 3 degrees, in rough figures.

Q. Then, if the "Selja" swung about a quarter of a point before she was struck she must have been heading about due south at the time the "Beaver" came in sight? I am presuming this. This is a theoretical case now. I am not asking you the facts at all, but I am presuming a theoretical case. I

(Testimony of Olaf Lie.)

say if the "Selja" had swung but a quarter of a point before she was struck she would be sailing on a course due south, would she not—practically?

A. Well, it would depend on how much she was heading when she sighted the "Beaver" would it not?

Q. I say if she had swung but 3 degrees at the time she struck she would be heading about due south when she saw the "Beaver" Would she not?

A. Well, then the "Beaver" must have come up from south southeast if I should sight her 2 points on the bow.

Q. Presuming now that you sighted the "Beaver" when the "Beaver" was on a course due west—2 degrees south of west—and that the "Beaver" did not change her course at all up to [977—853] the time of the collision and that the "Selja" swung but 3 degrees, or a quarter of a point, at the time she was struck, she must have been sailing due south, or thereabouts, at the time she sighted the "Beaver," must she not?

A. No, I don't see why. It depends on other circumstances.

Q. What are the other circumstances?

A. Well, I expect you base them on that the "Beaver" proceeded and struck at right angles—is that it?

Q. Presuming that, yes.

A. And that the "Selja" did not swing—that the "Selja" swung 3 degrees—that is practically nothing.

Q. It is a quarter of a point, is it not?

(Testimony of Olaf Lie.)

A. Well, it is a quarter of a point, yes, but you could not count that.

Q. I say presuming that?

A. She would be heading south when she struck.

Q. I say when she saw the "Beaver." If she only swung a quarter of a point when she was struck, at the time she saw her she must have been pointing south?

A. Yes, if she only swung a quarter of a point during that time.

Q. I am presuming that; I am only relying on your testimony. A. That is it.

Q. Perhaps you did not do it. How much power have you got in your engines, how much horse-power?

A. Ordinarily somewhere around 1600.

Q. Ordinarily? A. Yes.

Q. What did you have on this day with 150 lbs. of steam? A. With 150 lbs.?

Q. That is what you said?

A. I didn't know; I didn't know how much horse-power she had that day. Of course, we would [978—854] not go with 1600 horse-power half speed. That is a sure thing. I mean ordinary full speed with 1600 horse-power.

Q. How many horse-power would she be going with at half speed?

A. I don't know; absolutely I don't know; I have no knowledge.

Q. Well, about how many?

A. That is very hard to say. I would not guess at it because I don't know.

(Testimony of Olaf Lie.)

Q. Would it be half your ordinary horse-power?

A. I could not say. That is something I could not say.

Q. It would be something less than half, would it not, Captain? A. Perhaps less, yes—perhaps.

Q. So that that was all the horse-power you had available for going astern, was it not?

A. No. We had more horse-power for going astern because the engines were shut down and therefore the engines did not develop going ahead but she could develop more going astern.

Q. How much do you think now she developed going astern?

A. Well, that is hard to say. I could not say that. I don't know the revolutions, but I should say that she must have developed at least 1,200 or 1,300 going astern, although I don't know. That is only a guess you know.

Q. How long would it take for that power to begin to assert itself? A. What is that?

Q. How long would it take for that 1,200 horse-power to assert itself and really get to work?

A. I could not say that either. I could not say on a case like that. It may come very quick. If you have not got much speed ahead the engines could commence to do work at once. If a vessel is practically at rest, for instance, when you reversed them the engines would commence to work pretty [979—855] near at once at full power.

Q. Well, not at full power, you mean as much

(Testimony of Olaf Lie.)

power as you could get out of the engines at that time?

A. I mean as much as you could get, yes.

Q. Yes, under the conditions? A. Yes, sir.

Q. You recollect testifying, of course—well, you have testified to that already, that you do recollect testifying you had swung but a quarter of a point before she struck?

A. I don't recollect that at all.

Q. You said that on your direct examination.

A. Here?

Q. Yes, here?

A. No, sir. I said that the "Selja" swung about a point, that she had swung about a point when the "Beaver" came in sight.

Q. I have asked you about this before. You have forgotten it. Do you remember testifying you could see about three ship-lengths from you?

A. Well, 2 or 3 ship-lengths, yes. I said about; 900 feet I said.

Q. Do you remember this:

"Q. How were you heading when you saw the other ship, do you recollect?

A. We were off the coast. The Third Officer was logging south 65 east magnetic"—

Mr. McCLANAHAN.—One minute; what are you reading from?

Mr. DENMAN.—The record before the inspectors. The same place that I read in a former examination of the Captain in this case.

(Testimony of Olaf Lie.)

“At the moment she struck I should think he came a quarter of a point south. His wheel was on the starboard quarter.”

Do you recollect that testimony now? [980—856]

A. I recollect it when you read it, but I don't understand that testimony. That is wrong altogether. I don't understand anything of it. I don't know what logging is at all. And another thing, I don't think I said a quarter of a point.

Q. Don't you recollect it?

A. I recollect you read it last time, but I don't recollect that I said so. I recollect that you read it for me once before and I said then I did not understand it.

Q. I will read this again:

“At the moment she struck I should think he came a quarter of a point south.”

A. Our vessel swung considerably after we reversed the engines.

Q. If you did make this statement at that time, and if it is pretty keen in the recollection of two or three people who heard you and noticed it as significant, you want to change it now, do you?

A. I don't think I said so, because I don't understand it. I said that this quarter of a point, or something like that, applied to the vessel when we saw her; but when she struck she was more than that.

Q. Do you suppose anybody could get in the record “at the moment she struck I should think he came a quarter of a point south”; do you think of any con-

(Testimony of Olaf Lie.)

ceivable language you could have used that could be twisted like that in the record?

A. I don't know what can be twisted. I know that my vessel swung more than a quarter of a point before the "Beaver" struck her.

Q. You didn't strike anything else that day, did you, but the "Beaver"?

A. I didn't strike anything; I don't think I struck the "Beaver" either. [981—857]

Q. Captain Lie, what were these men that were lost? They were firemen, were they not?

A. A sailor and a quartermaster.

Q. Have you heard anything from them or about them since the accident to the vessel? A. No, sir.

Q. Was it the quartermaster who was at the wheel who was lost?

A. No, sir, he had his watch below.

Q. You have testified that you thought you began to go astern after you saw the "Beaver"; that is correct, is it not?

A. Yes, she commenced to get sternway sometime after, I don't know how long it was after, but she had sternway.

Q. You testified that you ordered her full speed astern? A. Yes, sir.

Q. Captain, let us get back to your theory of these Pt. Reyes fog-signals; what direction was the whistle from you at 2.50?

A. It was abeam, and that would be about north 30 degrees east from me. It was abeam on the course south 60 east.

(Testimony of Olaf Lie.)

Q. And at 3 o'clock where was it?

A. Due north magnetic.

Q. Where would it be at 2:55, presuming you went at the same rate through the water from 2:50 to 3 o'clock. Just figure it out, if you will?

A. It would be north 15 east, about; it would be about that.

Q. You were speaking of the chart you used on that day; was it one you customarily used in approaching the harbor?

A. I always had that chart except for the entrance to San Francisco; then I had a larger one; I should say it is a copy of the chart which was introduced here of the entrance to San Francisco harbor. It is a British admiralty chart. But the chart I used to navigate was a chart—I don't recollect the number but I think it was from Conception Point to Cape Mendocino—a British admiralty chart. [982—858]

Q. From Conception to Cape Mendocino?

A. Yes; I think it was that; I am not absolutely sure of it.

Q. That was a proper chart to use under those circumstances?

A. I bought all the charts in England for around the world and I had these charts.

Q. You had something like half a million dollars of property under your charge at that time, did you not—the ship and the cargo? A. Yes, sir.

Q. So you had a chart large enough for the purpose of taking care of your property, did you not?

A. Yes, I had.

(Testimony of Olaf Lie.)

Q. Now, do you believe that under such a chart you cannot compute within two miles of your destination in a run of 24 miles?

A. If I shape a course for two hours, for instance, for a point—which I did that day, or perhaps it would be 3 or 4 hours for the “Selja” running at half speed—that course would be checked up later on again because I would not rely upon steering on that course with a current perhaps on either side, a little current on either side; I would check that up with a sounding, or if it cleared up I certainly would have checked it up. But the course from Pt. Reyes to the Light-ship is about south 65, I think on that course, on the right course, so if I passed a mile and a half off Pt. Reyes I would be about a mile and a half off the Light-ship—about that; that is the outside. I did not particularly steer for the Light-ship either. Of course, I wanted to make the Light-ship if I could get a pilot, but the pilots are always coursing a little to the north, or between the Light-ship and the Farallones.

Q. Do you recollect offering in evidence as your statement at the hearing before the inspectors the log-book entry for the [983—859] steamer “Selja”? A. Yes.

Q. That is a document required by your Government, is it not? A. An abstract of the log, yes.

Q. And the captain is required to prepare that and send it on, is he not, or have it prepared—I mean the master?

A. It is not absolutely for him to prepare it. But

(Testimony of Olaf Lie.)

he shall sign it. He shall sign it, yes. And it shall be a true copy of the log-book. But it is always kept by the chief officer, under the captain's management, of course. But the abstract shall be a true copy of the log and nothing else.

Q. But you were in charge of the vessel, of course, at the time of the collision? A. Yes.

Q. The first officer was not?

A. He was not in charge, no.

Q. And you had been during the previous half hour, had you not?

A. I had been in charge I might as well say all day.

Q. It was not even the first officer's watch on the bridge? A. No, it was not.

Q. Not at the time of the collision or within 2 or 3 hours prior thereto?

A. I would like to make a statement of this—

Q. (Intg.) Is this in answer to my question, or is it something outside?

A. It is in answer to the question.

Q. Just confine yourself to answering the questions.

A. I would like to make a statement on account of that just right here.

Q. I have not asked you anything about this.

A. I would not do you any harm; I will be absolutely fair.

Q. But you expect something out of this that you have to explain, don't you?

A. No, absolutely not. I will tell you the reason why the three officers signed it, I will tell you the

(Testimony of Olaf Lie.)

reason why? [984—860]

Q. I don't ask you for the reason.

Mr. McCLANAHAN.—Never mind, Captain, I will bring that out.

Mr. DENMAN.—I prefer to pursue my examination to the end and then Mr. McClanahan will pursue his examination, and then I can come back at you again possibly.

A. All right. It is not necessary for me to put it in.

Q. You recollect that this was read at the hearing before the inspectors, do you not, as your statement?

A. Yes, absolutely.

Q. You recollect this statement contained in here: "We then set the course by compass south 65 east straight for the Light-ship." You recollect that statement, do you not?

A. Yes, I do, but I did not translate it.

Q. Is there anything in the Norwegian statement that bears a different translation than that?

A. No, I don't think so. But a Norwegian would not express it absolutely straight for the Light-ship, I would say, perhaps, that I shaped the course forward of the Light-ship.

Q. What is the word that corresponds to "straight"? A. It is "ret."

Q. What does "ret" mean—right for the Light-ship, direct for the Light-ship?

A. It does not really mean direct for the Light-ship, not absolutely for the Light-ship.

Q. Well, why didn't you just say "for the Light-

(Testimony of Olaf Lie.)

ship" instead of putting in the word "ret"?

A. Well, it is accidentally put in. I don't think anything seriously of that at all. I just put it in and I don't see anything wrong in it.

Q. That is all right then; you put it in; so you drew this statement, did you?

A. No, I did not draw it.

Q. You just said you put it in?

A. It is put in I said. [985—861]

Q. No, you didn't say that; you said you put it in?

A. I will tell you how it is. This statement—on the 23d I was very busy; I had to report; I told the first officer to take the three officers together and make up the statement of each one. They had their respective watches all day, and to make them up and that then when they were through with it, and I was finished in the forenoon, I would look over it and I would see if it corresponds with the truth. I didn't see anything wrong in it, except what I added to it, although I didn't add anything to it, but it was the last watch—there was something omitted that I put in.

Q. You just said you put in the word "ret" in the fourth paragraph?

A. I don't think I put it in at all.

Q. You just said you did? A. Did I?

Q. Yes.

A. Well, I don't think I put it in. When the course was shaped at 2:50 the officer just put it in perhaps right to the Light-ship but he really didn't know how that went, he didn't see a chart, he didn't

(Testimony of Olaf Lie.)

see a chart after he came there.

Q. So whatever he did there he did under your direction?

A. Of course, I didn't see anything wrong in it and I didn't think there was anything serious in it at all.

Q. Your course was not straight for the Light-ship, was it? A. No.

Q. It was a mile and a half or two miles off?

A. About a mile and a half.

Q. As a matter of fact, when it comes to measuring up your sounding, it was two miles off, was it not?

A. Not the sounding the chief officer reported to me. [986—862]

Q. The chief officer reported to you a sounding that he had taken at 2:30?

A. He came on the bridge, as I said before, at 2:55 perhaps; I would not say sure to the minute; he came after I passed the point and he came with the slips and he was on the bridge while I went in the chart-room. I may have mistaken the slips, but I don't think I did. It seems to me he had 29 fathoms, and we were abeam of the light. I also had the bearings which I had taken myself, and it seemed to correspond. I did not plot out, as I said before, within 2 or 3 ship-lengths; perhaps it was 4 or 5 ship-lengths. If I had a bearing as close as 3 or 4 ship-lengths I knew I was safe.

Q. Now, just answer my question and don't go into a long digression. You remember testifying that you did not know whether or not the slips contained

(Testimony of Olaf Lie.)

the bearing of 2:30 o'clock. You recollect that, don't you?

A. And that is the reason I don't now recollect; if I was wrong you see I don't remember now.

Q. Of course, if you were wrong the position of your boat must have been out where the sounding was, not where you thought?

A. Yes, it should have been there.

Q. Do you recollect the testimony of the first officer, that he left off sounding before 2:45 and went to the bridge?

A. He said he was relieved at 2:45, but who took the sounding at 2:45 I don't know.

Q. And you recollect the testimony that each sounding thereafter was 35 fathoms up to the time of the collision?

A. That appears in the evidence of the second officer, yes.

Q. You also recollect saying that you consulted with the second officer afterwards and he got 35 fathoms? [987—863]

A. He did not say he got 35 fathoms all the time. And I think he told me when we were in the boat before we were picked up after the collision—he said, "Well, she is safe because it is 35 fathoms where she is now." I think he said that in the boat. We both looked at the watch when she sank.

Q. Don't you know that he testified he did not know what it was at 3:10, that he never took a sounding after that?

A. He said he took the sounding at 3:10. From

(Testimony of Olaf Lie.)

3:10 to 3:15 we didn't run more than 1500 feet—oh, no, I didn't run that far; I run from 3:05 about 1000 feet I should say, two or three ship-lengths, and in two or three ship-lengths you cannot say there is any difference in the sounding.

Mr. McCLANAHAN.—Q. Captain, you said from 3:05? A. From 3:10 I mean to 3:15.

Mr. DENMAN.—Q. That 3:05 crops up again rather significantly. As a matter of fact, you did run about three ship-lengths from 3:05?

A. No, sir; from 3:05 we run about half a mile.

Q. That is what you say now?

A. That is what I always said.

Q. How could she have run all that distance if she was nearly at a standstill at 3:10?

A. Now, you bring that out again, I will tell you, Mr. Denman, that when a ship gets down to 3 knots you might as well say that she is nearly at a standstill because she is not moving but as—she may appear nearly at a standstill, but the rules of the road say—and I would like to read the rule if you wish me to—a steam vessel under head but having no way upon her shall at intervals of not more than two minutes blow two prolonged blasts, with an interval of one second between. [988—864]

Q. What has this to do with my question? Please read it to him. (Question read by the Reporter.)

A. Well, I did not say that she ran 1,000 or 900 feet, but I said she would run about 2 or 3 ship-lengths—3 ship-lengths I should say; about 1,000 feet.

(Testimony of Olaf Lie.)

Q. When she was nearly at a standstill? Why did you say she was nearly at a standstill at 3:14?

Mr. McCLANAHAN.—I object to the question upon the ground that the captain has not said she was nearly at a standstill. That is a quotation from the translation of the Norwegian log.

Mr. DENMAN.—Q. Why did you state she was nearly at a standstill at 3:14?

A. A big ship like that, when she commences to travel at as low a speed as that, she may appear to anybody as nearly at a standstill for a long time.

Q. So that when the vessel stopped her engines at 3:10 she looked to you to be nearly at a standstill, is that it?

A. Well, I knew she was going somewhere around 3 knots, although I did not know exactly at that moment.

Q. Or possibly 4 knots?

A. Well, she was going about 3. Generally slow speed is somewhere between $3\frac{1}{2}$ and 4 knots sometimes.

Q. So that your description of a vessel going through the water at $3\frac{1}{2}$ or 4 knots is that she is nearly at a standstill?

A. Not exactly when she stops, but she may appear when you stop her engines, that she is not moving very fast.

Q. She may appear—I am asking for your description of a vessel moving at $3\frac{1}{2}$ or 4 knots through the water; is that [989—865] nearly at a standstill according to your definition? A. No, sir.

(Testimony of Olaf Lie.)

Q. But when I first asked you about that, you said that phrase had gotten in at the wrong place?

A. Yes, I said that phrase was not absolutely a good phrase.

Q. It was not a happy phrase?

A. I don't say happy; I don't see anything wrong about it.

Q. Your idea is that the mate who drew up this thing thought that the Norwegian words used there described the vessel going through the water at the rate of 4 knots, did you?

A. He didn't know what she was going at that time except he knew that the engines were stopped.

Q. How did that phrase "nearly at a standstill"—get in there if he didn't know?

A. The chief officer, I meant; the third officer would know.

Q. You said the chief officer made up the statement?

A. The chief officer wrote it on the consultation of the two officers with him.

Q. So the result of the consultation of those officers was that they described a vessel going through the water about $3\frac{1}{2}$ or 4 knots as a vessel being nearly at a standstill; do you suppose all those men could have made that statement?

A. Well, I don't know whether they all could have made it, but I don't see any seriousness in it. She could not be at a standstill—that is a certainty.

Q. So that either one thing or the other is wrong; if the statement is in here that she was nearly at a

(Testimony of Olaf Lie.)

standstill, that is incorrect according to your statement, is it?

A. It depends upon what you mean by nearly at a standstill; it may be she was as nearly at a standstill as she could be [990—866] by the vessel being stopped to 3 knots.

Q. Then if she stopped at 16 knots you would say the same thing, that she was stopped at 16 knots, but nearly at a standstill because she was as slow as she could be, stopping 16 knots?

A. I did not say that. That is an extremity.

Q. Well, I suppose that all those hours that you proceeded at a 3 or 4 knot speed you were nearly at a standstill that day—is that correct?

A. No, not as long as the engines were going she could not be at a standstill.

Q. So that if this statement, given as your statement before the inspectors, makes it appear that you stated that she was nearly at a standstill when as a matter of fact she was going through the water at between $3\frac{1}{2}$ and 4 knots, you desire to have that corrected, do you?

A. I have said what I said. She was not at a standstill and she did not appear at a standstill. I said that she was to me practically at a standstill at 3:15 although I would not say for sure that she was at a standstill, but as I looked at her I think then I would not be wrong in my opinion to give that signal that she was at rest, although the word "standstill" is never used by me.

Q. You used it all the way through here.

(Testimony of Olaf Lie.)

A. I never used it. It is translated that way in the log.

Q. You used it when you were on the bridge of the "Beaver" in talking to the officers there?

A. No, sir; I never used the word standstill. You may say that a horse stands still, but I never used that word about a ship. [991—867]

Q. You never did? A. No.

Q. Don't you know that every time you have spoken to me about this matter, either in my examination of you or in my talks with you outside, that you used the word "standstill"?

A. No, sir, never.

Q. Don't you know that you said at least 3 or 4 times to me that you never were at a standstill?

A. Well, you may have used it.

Q. No, I mean in the course of conversation?

A. Well, that may have come from that, but I never used it. That is the absolute truth. I never did use it. Standstill never occurred to me before it was translated into that log. I said to myself that that is not a good phrase in the sea language, if you can say so.

Q. Oh, you did. You said that to yourself, did you? A. Yes.

Q. That was the translation put in as your statement? A. I had not translated it.

Q. That was a translation that was to be put in as your statement before the United States Inspectors, was it not?

A. That was translated for the Norwegian Consul.

(Testimony of Olaf Lie.)

I had nothing to do with the translation.

Q. Didn't you go over it with him before he made a final copy of it? A. No.

Q. What?

A. I never did. He translated it. The original was there and there was nothing in the original that I was frightened with, and it was there. I did not bother with it. I relied on it and he translated it.

Q. Did you not talk with him about the terms used in the translation?

A. No, sir, never one word, not one word. [992—868]

Q. So that you just adopted this word "standstill" afterwards?

A. I did not see but that standstill was practically the same as a ship would be at rest; I did not see anything serious in the standstill. I never said a word to him about what he said or what he translated.

Q. As I understand you, then, if you did say you were at a standstill at 3:10, you were not, and if you did say you only swung a quarter of a point at the time of the collision that is a mistake also?

A. Well, we swung more than a quarter of a point from the time I sighted her.

Q. Now, let us take the distance off Pt. Reyes. And if you did say you were steering straight for the Light-ship, that is an error also—that is incorrect, is it?

A. It does not show that it was right for the Light-ship, no sir, because just as I said, I went to the chart

(Testimony of Olaf Lie.)

and drew the course from Pt. Reyes to the Light-ship, and I made that course, but I did not go into the chart-room again. I knew that course would not lead us into temptation before I had time to go in again. I just shaped the course and I would have gone in and checked it up again.

Q. Then you knew you would come off a mile and a half south? A. I didn't know it.

Q. You knew you were a mile and a half off Pt. Reyes, did you not?

A. Yes. I just drew the ruler over it and took that course.

Q. You knew that the direct line from Pt. Reyes to the Light-ship was not that course, did you not?

A. It was about 1 or $1\frac{1}{2}$ or 2 degrees different.

Q. So then you knew that if you kept your course down there [993—869] you would come at least a mile and a half to the southward of the Light-ship?

A. I did not know it at the time, no, sir.

Q. You knew you were a mile and a half off Pt. Reyes, did you not? A. Yes.

Q. And if you kept your course you knew you would come a mile and a half southward of the Light-ship, did you not?

A. I didn't know it. I said I knew that that course would not lead us into temptation.

Q. We will go back and read the testimony for you. (Record read by the Reporter.) Now, Captain, you know as a matter of fact, that the course from Pt. Reyes to the Light-ship is south 65 east—within 3 degrees—is it not?

(Testimony of Olaf Lie.)

A. About. I have not looked—I think the sailing directions show that the course shaped from Pt. Reyes is east southeast in points.

Q. Didn't you just tell me now—

A. (Intg.) I said about 2 degrees different.

Q. And you said you went into the chart-room and you knew—

A. (Intg.) I did not know at that time, no, sir.

Q. And you went into the chart-room and drew the line from Pt. Reyes to the Light-ship, when you were in front of the Light-ship in the chart-room in your own vessel—is that right?

A. I drew the course from Pt. Reyes to the Light-ship, yes.

Q. And you found that was south 65 east?

A. I found the course would be south 65 east, yes.

Q. And you were at that time a mile and a half off Pt. Reyes, according to your statement?

A. Yes.

Q. Now, do you think that by pursuing a course south 65 east you would not arrive a mile and a half off the Light-ship?

A. I don't think I would. [994—870]

Q. You don't think you would?

A. No, sir. That is hard to say because I never rely upon a course steered in a fog like that. I would take soundings. We have opportunity to take observations. We do not rely entirely on a course steered that way without taking soundings or doing something to show that we are going on right.

Q. Now, Captain, do you recollect stating in your

(Testimony of Olaf Lie.)

prior examination—do you recollect denying that the course you sailed would bring you a mile and a half or 2 miles south of the Light-ship?

A. I said I denied it would bring me 2 miles out. I said that. It would not bring us 2 miles out.

Q. And you said you never would shape a course that would bring you a mile and a half or 2 miles out of your way on a 20-mile run?

A. I don't think I did. I don't think I said I would never shape the course—well, 2 or 3 miles I would say. The course did not go 2 or 3 miles off.

Q. Would you ever shape a course half a mile away when you could shape it directly for it?

A. Yes, if I was a long way off. One degree will perhaps take 10 miles.

Q. 10 miles on a 24-mile run?

A. No, not on a 24-mile run, but on a long distance. 2 degrees on that course would be about a mile and a half in that distance. 2 degrees on the compass would be about 2 miles apart at the end of 20 miles.

Q. So that even on a 20-mile course, you have to steer very carefully so as to not lose ground, don't you? A. Yes.

Q. You have to make a very close and careful calculation or you will lose ground? A. Yes.

Q. You would not call it good seamanship to steer a mile and [995—871] a half west of the Light-ship if you wanted to go to the Light-ship, would you? A. I don't call it bad seamanship.

Q. You don't? A. No, sir.

(Testimony of Olaf Lie.)

Q. In other words, you add a mile and a half or possibly 2 miles to your journey in 24?

A. I would certainly check that course up again. I would go in the chart-room and check it up, or if I did not go some of the officers would check it up.

Q. You mean check up how much deviation you had on it?

A. No, sir, not deviation. When a course is checked—I always have the order on board that I checked the course or the officers running it should always go and see if that course is correct. We check it up many times to see.

Q. Well, you had been running 15 minutes on it, had you not—no, 25 minutes—at the time of the collision?

A. I did not go in to look because I had something else to attend to at that time.

Q. What did you have to attend to?

A. I think it appears that I heard that whistle, that I was timing that whistle and clearing up my mind as to that whistle.

Q. That you remember occupied you until 3:10?

A. Yes, sir.

Q. To clear up your mind as to whether it was the whistle of a ship, or not? A. Yes, sir.

Q. You did not know until 3:10 whether it was the whistle of a ship or something else; that is correct, is it not? A. Yes, but I knew then.

Q. At 3:10 sharp it came into your mind that this thing you had been hearing a minute apart was a whistle and not something else?

(Testimony of Olaf Lie.)

A. I don't say right on the second, it might have been [996—872] 30 seconds before, or something like that.

Q. Could you tell what course the "Beaver" was on during that time before you saw her?

A. I could not tell exactly what she was steering, no.

Q. What did you think she was steering—about?

A. Oh, I didn't think exactly what she was steering. I never thought of the exact course she was steering.

Q. Did you think of her course at all as you came ahead during that time?

A. I commenced to think of the course after I stopped my vessel, yes, sir.

Q. I thought you said you didn't know whether it was a ship, or not? How could you have thought about her course if you didn't know whether it was a ship, or not?

A. I said after I stopped my vessel I commenced to think.

Q. Oh, I see; so up to 3:10 you had no idea whether she had a course, or what the course was, or whether it was a vessel that could have a course?

A. I knew at 3:10 what it was.

Q. Well, it is apparent you could not know what her course was if you did not know whether it was a vessel, or not; that is right, is it not?

A. Yes, sir.

Q. Do you recollect testifying that coming out of the fog you could not tell what course the "Beaver"

(Testimony of Olaf Lie.)

was on until she had shown up in the fog?

A. Yes.

Q. So that up to that time you did not know what course she was on? A. Not exactly, no, sir.

Q. That was 3:15, was it not?

A. That was 3:15; I did not know exactly what she was heading then. She may have been heading anywhere at that time. [997—873]

Q. Have you a pair of dividers here, Captain?

A. No, I have not.

Q. Captain, if you have previously stated that you had ascertained the position of the "Beaver" prior to 3:10, you wish to correct that statement, do you?

A. No, sir, I do not.

Q. So you think the position of a vessel is ascertained when you do not know what her course is, you do not know how far off she is and you do not know whether she is a vessel, or not—is that correct?

A. I did not say I did not know it was a vessel all the time, did I?

Q. You said you did not know until 3:10 that it was a vessel.

A. No, sir. It came into my mind, just a thought, that it might have been a fog-whistle off the entrance to San Francisco.

Q. You recollect testifying three times, do you not, that you did not know it was a vessel until 3:10?

A. Yes, I remember.

Q. Do I understand you that you still persist in saying that you have located a vessel or ascertained the position of a vessel when you don't know whether

(Testimony of Olaf Lie.)

it is a vessel, or not, you don't know how far off she is, and if she has any course you don't know what it is?

A. I don't say that I didn't know the course approximately. She was steaming toward us and across our bow a little, but it is absolutely impossible to say to a degree. I knew she was coming toward us. The rule does not say, I don't think, that you shall ascertain the ship's course to a degree.

Q. Then you still persist that you ascertained the position of the "Beaver" at 3 o'clock?

A. Safely enough to avoid collision, yes. [998—874]

Q. Well, that is a matter of inference. You had no absolute knowledge of her position in the water at that time?

A. I knew she was a long distance off.

Q. But you had no absolute knowledge of her position in the water, did you?

A. Not absolutely exact.

Q. You just stated to us that it is well known to you that you may not be able to hear whistles a long distance in the fog and at other times you can hear them at much longer distances; that is correct, is it?

A. Yes.

Q. How could you tell at this time whether this was a whistle near or far in view of the fact that the fog often obscures the sound of the whistle?

A. I can always hear if a whistle is far off; if it sounds far enough—that is to say, if you listen long enough and you can hear it distinct enough you can

(Testimony of Olaf Lie.)

say whether it is far off, or not.

Q. You can? A. Yes, sir.

Q. You listened for 10 minutes before you ascertained that, did you not?

A. I did not listen for 10 minutes to ascertain if it was far off, no. I would like to make a statement here: for instance, I commenced to time the whistle; it sounded pretty regular to me; it sounded so regular to me, it blowed pretty near 5 seconds—the blast—and the interval it seemed the first three whistles I heard pretty near the same. That is the reason I commenced to time it. Before I entered the sound of Pt. Reyes my book—and I had the latest book, which I bought in Hongkong, it showed that Pt. Reyes should blast every 70 seconds, with a blast of 5 seconds, and a steam-whistle. After I commenced to hear that whistle it sounded every 35 seconds. That is the time that whistle [999—875] was timed—at least twenty times. The blast was about $2\frac{1}{2}$ or 3 seconds, if I remember right. The blast was short. We got it to be about 3 seconds. I don't know how long it did blast, but the 35 seconds I am positive of is correct. When I came ashore here I bought a book to see if they had entered the point and I could not find it. It was not in the book that I bought at one of the nautical stores here. I could not get it there that Pt. Reyes was changed. This whistle had been changed. I never heard Pt. Reyes whistles myself before.

Q. Why, Captain, don't you recollect swearing that the reason you knew Pt. Reyes whistle was by

(Testimony of Olaf Lie.)

the interval? A. I did not.

Q. You did. You swore that the reason you knew it was Pt. Reyes whistle was because you knew the interval and you heard it?

A. I knew it must have been because it was regularly 35 seconds and by the soundings. I did not know it, absolutely not.

Q. I thought you said it had been changed?

A. I did not know it, but according to that I knew it must be Pt. Reyes because it sounded 35 seconds, and the soundings brought me to it and I knew it could not be anything but that.

Q. It was 70 seconds in the book you had?

A. Yes, sir.

Q. And it was 35 seconds and you said you knew it was Pt. Reyes whistle because it was 35 seconds?

A. I knew it could not be anything else.

Q. You say you knew it by the timing of the whistle, and at that time you said it was a 70-second interval; how can you reconcile those statements?

A. I said it must have been altered. That is what I said. A fog-whistle is often altered. [1000—876]

Q. So you recognized that this fog-whistle blowing at an interval of 35 seconds was the Pt. Reyes fog-whistle because you knew it must have been altered from 70 seconds?

A. Well, I knew I was in the neighborhood of Pt. Reyes and it could not be anything else.

Q. Don't you know you didn't hear that whistle at all? A. That I didn't hear it?

Q. Yes.

(Testimony of Olaf Lie.)

A. I know that's a damned lie. I deny it. I heard it.

Q. Don't say damned lie to me, Captain. Don't you know you didn't hear it at all?

A. That astonishes me for you to say I didn't hear that whistle. Do you think you can scare me? I don't want you to treat me like a liar, because that is absolutely that you believe I am lying; you must believe it.

Q. I think there is a vast difference of opinion here between the witnesses. I think that may be cleared up later on.

A. Well, I don't want to be insulted. I heard the Pt. Reyes whistle and you cannot say I didn't.

Q. I say that your method of identification is very indefinite.

A. I am not coming here to be insulted.

Q. I think you had better withdraw your suit then. You asked me a question and I answered it.

A. I am astonished to hear you say I never heard it at all. That is the most astonishing question I ever heard tell of.

Q. Then explain to us how you knew it must have been reduced from 70 to 35 seconds and therefore must have known it was Pt. Reyes?

A. I said I knew it was Pt. Reyes, I had the soundings and I had the Pt. Reyes whistle, although it was changed. It could not be anything else.

Q. You just had one sounding of 29 fathoms?
[1001—877]

A. I had more soundings—less than 30—but how

(Testimony of Olaf Lie.)

many of them I don't know.

Q. You are very sensitive to the suggestion, are you not, Captain, that you might be telling an untruth?

A. I am telling the truth and nothing else but the truth.

Q. I know, but I say you are very sensitive to that suggestion?

A. Yes, because when a man believes I am lying I feel sore about it.

Q. You would resent that very much, wouldn't you, if a man did it seriously?

A. I don't want to have anybody believe that I am lying.

Q. Captain, will you take the parallels and draw a line from the Pt. Reyes whistle which will be south 15 west magnetic.

(The witness does as directed.)

Q. What was the tide on this day, Captain, when you passed there—was it high?

A. About high tide, yes.

Q. That would take 4 feet off the markings, would it not? These markings on the chart mean low tide?

A. Yes.

Q. So that high tide would make about 4 feet difference?

A. It will be 5 feet more; the soundings would show about 5 feet more than the sounding on the chart.

Q. So that a reported sounding of 35 fathoms would be about 34 fathoms on the chart?

(Testimony of Olaf Lie.)

A. About that, yes.

Q. Now, find me the 34-fathom point, about where it ought to be on this line you have just drawn from Pt. Reyes, which line I will mark "A R."

Mr. McCLANAHAN.—You want a 34-fathom marking anywhere on the line?

Mr. DENMAN.—Q. (Intg.) As nearly as you can fairly and honestly make it to Pt. Reyes, Captain? [1002—878]

A. Well, it may be close up to the bank; it is very hard to say.

Q. But you said that those soundings go gradually, the bottoms go gradually?

A. Soundings on the chart are a mile apart and no one can tell exactly what is between the soundings. It is the same as looking down town; you look a mile and you may get a lot of difference in the soundings if you think the bottom would be the same.

Q. We will call that point "D"; this point "D" is about a fair marking on the chart for 34 fathoms, is it not?

A. Well, if it was only one sounding—of course, we have to have succeeding soundings to find our position.

Q. Draw a line on there due north and south which would indicate the line you were on, the whistle bearing, at 3 o'clock?

A. (Witness does as directed.)

Q. That line cuts the 34-fathom line on there?

A. Yes, just about.

(Testimony of Olaf Lie.)

Mr. PAGE.—You have not identified that line.

Mr. DENMAN.—We will call that line “B R.”

Q. How near to the 30-fathom bank line would you care to put the 34-fathom mark on that line?

A. It is hard to say.

Q. Well, do it fairly, Captain. I just appeal to your own sense of fairness.

A. You know by doing that, Mr. Denman, it is very hard to have the course you steer.

Q. I want you to put the sounding down. Suppose you have three soundings. You know what I have in mind, Captain, of course? A. Yes, I do.

Q. Now I ask you to be fair and I ask you to put a line down there that would be a fair representation of the 34 fathoms [1003—879] you got at 3 o'clock.

A. Well, it is very hard to say. It may be there, it may be there, or it may be there (pointing). As I said before, when we commence to plot our sounding, we always take the course we steer and also take the soundings at the same time, the distance apart between each sounding.

Q. We will mark that “E.” Now please draw on there a line for 2:50 o'clock.

Mr. McCLANAHAN.—A line from where?

Mr. DENMAN.—A line from the Pt. Reyes whistle at 2:50 o'clock?

A. You want the bearing I had when I was abeam, don't you?

Q. Yes.

A. (Witness does as directed.)

(Testimony of Olaf Lie.)

Q. We will mark this line "C R."

Q. Now, Captain, put on there about where you could fairly mark 34 fathoms?

A. That would be across in there I should say, although it is hard to say without drawing the course. You have to draw the course when you take the soundings. If he reported, for instance, 35 fathoms it may be a little over or it may be a little less. He does not take the feet into consideration.

Q. He takes the nearest fathom, does he not?

A. He takes the nearest fathom, yes.

Q. We will mark that "F." Now you notice that "E, D and F" are not on a straight line, are they?

A. I can get them on a straight line.

Q. I say they are not on a straight line?

A. Not as I marked them.

Q. But you have three whistle bearings now and three soundings, have you not? A. Yes. [1004—880]

Q. Of course, in order to fairly determine the whistle bearing you would have to take into consideration the soundings, would you not?

A. Well, I would, yes.

Q. To locate your vessel you would have to do that, would you not?

A. I did take the soundings into consideration.

Q. But I am just asking you a theoretical question. I say you would have to, would you not?

A. Yes.

Q. And the three soundings and the three whistle bearings you would have to take into consideration

(Testimony of Olaf Lie.) .

—the soundings—to locate your vessel, would you not?

A. And the distance run. That would be just as good. I don't need the soundings if I have the distance run.

Q. But the distance run is modified by currents and by the roughness of the sea and all that sort of thing, is it not?

A. Yes, but I want to say that it is impossible to take soundings so far apart. I would rely upon the distance run, just as good as the soundings.

Q. If the soundings should show up differently from your distance run—it is fair to presume there may be something wrong in the report of the distance run, is it not?

A. There is very little difference in it. If it would be a serious difference in it of course we would have to depend upon the soundings.

Q. Because the soundings are the things that are fixed quantities, are they not?

A. Certain fixed quantity, yes.

Mr. McCLANAHAN.—Mr. Denman, will you please let the witness answer the questions fully. He gets half way through and you interrupt him. Now, just as an accommodation to me and to the witness, please let him finish his answer. I don't know what he is going to say, and nobody else does, but he [1005—881] is interrupted so often that I have to make this objection.

The WITNESS.—You see in taking soundings it is a good aid to navigation, not to run ashore, but it

(Testimony of Olaf Lie.)

depends a great deal on how far the soundings are apart, the accuracy of the soundings, and you can find them so that you can with safety navigate your ship.

Q. Do you recollect what you stated before the inspectors? I will read it:

“Q. How did you judge by the lead when the lead was not on?

A. On the depth of the water.

Q. According to that you worked in on those soundings until you got from one to the other and checked off on your chart and knew just exactly where you were? A. Yes, sir.”

A. Yes, sir.

Q. Now, draw course south 65 east through those three soundings that you have there, Captain, as fairly as you can do it. Don't put it right over the bank, put it a little bit out.

A. I will put it across the bank. You have to take the most soundings—if, for instance, you have a certain amount of soundings, you cannot depend upon one, you have to take the most of the soundings which correspond.

Q. Now, that is fair, is it not, now (indicating)?

A. Yes, it is fair.

Q. Now draw it out to the Light-ship.

A. (Witness does as directed.)

Q. Now, this course that you call fair, is the course—Captain, I think you are a little off on that, I won't quite agree with you on that.

A. You have to go back to the compass.

(Testimony of Olaf Lie.)

Q. Yes, go back to the compass. I will take it just exactly; now just look. [1006—882]

A. Well, it must have been moving; it is just the break of the pencil inside.

Q. Well, we can fix that all right, Captain. Just do that again. A. (Witness does as directed.)

Q. This line you refer to as a fair determination of your course by whistle bearings and soundings is marked "F L," is it not?

A. The soundings that were taken that were reported in the evidence by one of the officers; but that is not based on the soundings I had aboard the ship.

Q. But you just testified you had no soundings subsequently to 2:50?

A. I did not say I did not have the soundings. Perhaps I have mistaken that sounding—if one officer said he had 35 fathoms, I understood he had 29 fathoms. That was reported to me aboard the vessel.

Q. And don't you know that the man who reported to you testified that he left the sounding place at 2:45 and was relieved at that time?

A. He did not say that to me aboard the ship.

Q. No, but he testified to that under oath, before you and the rest of us, when his deposition was taken? A. Yes, I think he did.

Q. And subsequently to that you put into the evidence here an exhibit which did not take into consideration the 35-fathom soundings, did it?

A. I don't understand that.

Q. You remember putting in an exhibit here,

(Testimony of Olaf Lie.)

your first exhibit—in which you showed a course off the Pt. Reyes Light-ship; you recollect that, do you not? A. Yes, sir.

Q. And in that course you did not take into consideration the 35-fathom soundings which were sworn to in your presence by your officer?

A. No, sir.

Q. You ignored the 35 fathom sounding in giving your exhibit [1007—883] into the court?

A. I did, but it is practically the same; it is only 3 or 4 ship-lengths difference inside there.

Q. Well, we will see about that. What is the fair distance between F and E? Put it fairly on the line, Captain.

A. That is about as fair as it can be.

Q. Yes, that is about right. What is that?

A. Well, a mile and an eighth.

Q. It is nearer a mile and a quarter, is it not?

A. Well, let us say a mile and a quarter.

Q. How long did it take you to travel that mile and a quarter? A. 10 minutes.

Q. How many knots is that per hour?

A. That is about $7\frac{1}{2}$.

Q. Now, if you were butting into a northerly current there, you would have to be going still faster, would you not, to cover that distance?

A. Well, if it was a current against us, yes.

Q. Now, let me ask you: this course as shown by the compass-bearing and soundings takes you whereabouts with reference to the Light-ship, how far from the Light-ship?

A. This course (indicating)?

(Testimony of Olaf Lie.)

Q. According to the whistle-bearings and soundings that you have drawn here for me, where does that take you with reference to the Light-ship?

A. About 21½ miles to the southward of it.

Q. You had no special reason, had you, Captain, for drawing your course for the Court on a chart that had no soundings on it?

A. No, sir, absolutely not.

Q. Absolutely none? A. No, sir. [1008—884]

Q. Although you would navigate your ship on a chart that was smaller even than this chart that I have here at present?

A. Yes, a little smaller than that. I should say that the scale would be about half of this.

Q. The point "D" is farther to the southward of Pt. Reyes than the line of course you have drawn?

A. It is because I put the points in just approximately before I drew the course.

Q. It is on that line where the point "D" is that you were at 2:55? A. Yes, about that.

Q. And you were about at the point "E" at 3 o'clock? A. Yes, sir.

Q. Now, draw a line from the point "E" to the Pt. Bonita siren, just a straight line?

A. (Witness does as directed.)

Q. Presuming now that you were on a course and your vessel was pointing in a direction south 65 east at the point "E", at what angle to your port was the whistle at Pt. Bonita? A. 23 degrees.

Q. And when you had traveled as far as that was

(Testimony of Olaf Lie.)

away, how many miles from your ship would that whistle have been, approximately?

A. I didn't catch that.

Q. How far was that whistle off your course if you had continued it?

A. You mean until we were abeam of it?

Q. Yes. A. About 10.

Q. You mean 10 miles? A. Yes, sir.

Q. And you didn't know until 3:10 whether or not the whistle that you heard in front of you was a whistle from there or from a ship?

Mr. McCLANAHAN.—I object to the question upon the ground that it has been answered a dozen times in the case already. [1009—885]

A. I did not know because I did not have the chart photograph in my head.

Mr. DENMAN.—Q. You thought, although you were going 2½ miles outside the Light-ship—

A. (Intg.) I didn't know at that time I was.

Q. Then you did not know where you would land on the course you must have taken from your soundings?

A. I know the soundings that were reported to me up to that time, which is only a quarter of a mile inside, or a little more, that it would land me around the Light-ship if I would continue.

Q. Captain, there is nothing very clever in my discovery of this, is there? You do not consider it so, do you? A. No.

Q. You knew all this before you came into court?

A. I never thought of it.

(Testimony of Olaf Lie.)

Mr. McCLANAHAN.—What do you mean—discovering what?

Mr. DENMAN.—Q. Then you never checked up on your soundings when you made the exhibit you introduced into court?

A. I never looked at the evidence of the officers at all.

Q. But you were present when it was taken?

A. Yes, but I never took any notice of it because I built upon what I experienced on the bridge, I never built upon anything that was said after I came ashore.

Q. If you built up on your experience not on shore you were only a mile and a half from Pt. Reyes at the time you passed? A. Yes.

Q. Now you found you made a mistake in that, did you not, by subsequent examination?

A. Yes, sir. [1010—886]

Q. It was not your experience on the bridge that discovered that mistake, was it?

A. I did not discover that on the bridge because, as I said many times, the soundings to me were reported to be on the bank and 29 fathoms were aboard. That I think has been said so many times that I think it is enough now.

Q. I am now talking about the thing you made up for the Court when you discovered that there were no soundings.

A. I never paid any attention to that at all; I don't think I looked at it. Perhaps I looked at it.

(Testimony of Olaf Lie.)

Q. You did not have to look at it to hear the man say that from 2:45 until 3:10 he had nothing but 35 fathom soundings? A. He said so.

Q. If you had noticed it you would have considered it important, would you not?

A. I would not have considered it important.

Q. You would not?

A. I never thought of that at all because I don't think that has anything to do with the collision and therefore I didn't think of it—absolutely.

Q. Don't you think the course you were sailing on had anything to do with the collision?

A. I don't think so.

Q. And you don't think the distance that the vessel travelled after she left Pt. Reyes has anything to do with it? A. I don't think so.

Q. And you don't think the point of collision has anything to do with the case?

A. No, I don't think it has anything specially to do with it except that my vessel was there, that is all. I wanted to show that my vessel was there—it was for nothing else.

Q. We admit that your vessel was there and regret it exceedingly, Captain. According to the whistle-bearings and soundings [1011—887] then, you had covered a distance that showed you were going at the rate of about 7½ miles an hour?

A. The log showed 6. That was logged from 1 o'clock carefully by one of the officers. We did not rely anything at all upon any quartermaster; the

(Testimony of Olaf Lie.)

chief officer had the orders to take the log.

Q. Don't you think it is just possible Captain, that the following sea helped you some?

A. Absolutely not.

Q. All right. Let me ask you in that connection—

A. (Intg.) The log would show that.

Q. You remember the testimony here to the effect that the log came home?

A. No, sir, I never said that the log came home, absolutely not.

Q. Then you mean to say that the following sea would not carry the log along as fast as the vessel?

A. It would be the same in proportion.

Q. It would be the same in proportion?

A. Yes, sir.

Q. So that the following sea might have added this knot and a quarter to your rate here, although the log would not show it?

A. I don't know. I don't think that is right. You cannot base you speed upon two soundings like that.

Q. There are three soundings, are there not, and three whistle-bearings?

A. Yes, that is right enough, but this short distance—only 10 minutes—you have to run very long. If you are a quarter of a mile out, or if you are 2 degrees out in the bearing, say 2 degrees out in the bearing, which is practically nothing, on that chart there it will make over a knot an hour.

Q. So that your whistle-bearings—the difficulty in determining will make all that difference in your

(Testimony of Olaf Lie.)

calculations, [1012—888] will it?

A. When I said I take the sounding of a whistle, I do not mean to say I could take it on an exact degree; it may be one degree on either side—one degree.

Q. Or perhaps 2 degrees? A. Perhaps 2.

Q. Or perhaps a point?

A. Oh, no, not a point, absolutely not.

Q. Such a thing could not happen as was described by your countryman here at that meeting in Washington, that the whistle would come from the port side and you would hear it on the starboard side—that could not happen?

A. No, that could not happen that way I am sure.

Q. There was a heavy fog that day, was there not?

A. There was a heavy fog, yes, sir.

Q. And you say the fog had been lifting and falling?

A. In the afternoon it was pretty nearly steady.

Q. And the sun was shining through? A. Yes.

Q. I thought you said the fog had thinned out?

A. It thinned out a little at one o'clock, but it kept about the same all afternoon. It was thicker in the forenoon, but it thinned out about noon.

Q. It was thick down on the water but thin up above—is that it? A. That is it, about that.

Q. In other words, a low thick fog?

A. Yes, sir. Now, another thing is—

Q. (Intg.) Now, just a moment, Captain. You let your counsel bring out your testimony. So you don't place any great reliance on the accuracy of

(Testimony of Olaf Lie.)

whistle-bearings and soundings for locations but you prefer to take your log run and whistle-bearings?

A. I take it all into consideration, but you take now and say if I took a bearing and found that that was one-eighth [1013—889] or a quarter of a mile in the bearing and you convert that in the day you will get a long distance. In an hour you will get over a knot. That does not mean to say you can find the speed of the vessel with two bearings within 10 minutes.

Q. This is three bearings.

A. Well, say three bearings within 10 minutes. It is impossible to say how much a ship would travel in an hour on these two bearings. If I got these two bearings and travelled a mile in between them I would say they were pretty accurate bearings, although it would show on the chart a little over a mile. But that does not say that the ship was making $7\frac{1}{2}$ knots—absolutely not.

Q. But in so far as you could determine it from your whistle-bearings and your soundings as you have them here, you were making $7\frac{1}{2}$ knots?

A. Well, according to that.

Q. Well, this is the same calculation as your other chart that you put before the Court shows, except you reversed the process, omitted your soundings entirely and relied upon the distance run?

A. I don't think that chart showed exactly a mile from 3 o'clock; it showed about that, I think.

Q. Well, the exhibit is here, I presume. Don't you know, Captain, that it only marks a mile and you

(Testimony of Olaf Lie.)

marked it in feet?

A. Not the distance run up to that time. This is the chart—

Q. (Intg.) Answer the question, is that correct?

A. Let me see.

Q. Didn't you mark it in feet?

A. I marked it a mile.

Q. And you went to the point of 6080 feet, did you not, and it is correct?

A. Yes, that is the way it stands here.

Q. Well, you would not put it down with that accuracy when it was only approximately 6,000 feet, would you, Captain? [1014—890]

A. Well, it happened to be a mile and I put it into feet. A mile is 6,080 feet. I would not say it is absolutely in feet. You see that is not a mile; it should be a mile but it is less than a mile.

Q. Why should it be a mile?

A. Because we run a mile on the log.

Q. So that you made up that calculation from the run on your log? A. Yes, sir.

Q. Exactly?

A. No, absolutely not, because the First Officer took the bearing on my orders, and that is just put down according to his bearing.

Q. So it is on what you thought the location ought to be, taking the bearing and the distance run reported to you—that is the way you made it up?

A. The Chief Officer took the bearing. I ordered him to take the bearing to show if it was any different between that and my bearing, and then he

(Testimony of Olaf Lie.)

said the light was about north; that is what he said. He did not say it was absolutely north. He said it was about north. I did not get time at that time to go in and lay that off. I laid it off after I came ashore.

Q. What is the distance that you ran between 2:50 and 3 P. M. as it is shown by the points on Libelants' Exhibit No. 1. Just mark how it is—you can get it over here (indicating).

A. It is fifteen-sixteenths.

Q. So there are five-sixteenths of a mile difference between the course as shown by the whistle-bearings and your log, and the course as shown by the soundings and the whistle-bearings—is that correct?

A. Yes, by the soundings given by the second officer; five ship-lengths out. [1015—891]

Q. You mean there are five ship-lengths difference in the period of 10 minutes. That is correct, is it not? A. Yes, sir.

Q. Five ship-lengths and five ship-lengths make up how much? A. That is five-sixteenths.

Q. And five-sixteenths is what?

A. That is about one and a quarter.

Q. It is five-sixteenths of a knot? A. Yes.

Q. That is in 10 minutes. That is thirty-sixteenths in an hour, is it not? A. Yes.

Q. That is a knot and seven-eighths difference in the time, is it not, in an hour; is that correct?

A. Yes, that is correct.

Q. So that the chart as drawn by you on whistle-bearings and soundings differs and shows a differ-

(Testimony of Olaf Lie.)

ence in the rate of speed of one and seven-eighths knots an hour from the chart drawn on whistle-bearings and log; that is correct, is it not?

A. That is taking the last two bearings, yes, if you take it that way.

Q. Now, let us figure on the rest of the bearings.

A. What bearing do you want?

Q. Take south 60 east from "F."

(The witness does as directed.)

Q. Now, show us, Captain, where you were when you had the 29 fathoms?

A. Well, on this chart it would be any of—if you draw on the soundings here it would be at 2:35.

Q. At 2:35? A. Yes.

Q. Now, Captain, the line "F. M" is the line south 60 east? A. Yes, sir. [1016—892]

Q. And that is the course you were on before you turned to south 65 east? A. Yes, sir.

Q. According to the course as checked out by your soundings and your whistle-bearings, how far were you from the Pt. Reyes whistle when you were abeam? A. About 2 miles.

Q. And that, of course, is hitting the 34-fathom sounding right on the 30-fathom line, is it not? You put your divider right on the line, did you not, practically on the line—that is correct, is it not?

A. What do you mean? I put it right there (indicating).

Q. Oh, yes, I see. Captain, you have got on my nerves, I don't seem to be able to hold this.

(Testimony of Olaf Lie.)

A. Well, it is a little slack. Where are you checking it?

Q. I am checking it from the whistle. It is about 2 miles and something, is it not?

A. $2\frac{1}{8}$; it is more than $\frac{1}{8}$ —well, $2\frac{1}{8}$.

Q. Yes, $2\frac{1}{8}$ is right. How far did you find in the log you were from Pt. Reyes when you passed it?

A. One and $\frac{1}{2}$.

Q. $1\frac{1}{2}$ miles?

A. Yes, that is about right.

Q. What would be your sounding at one and $\frac{1}{2}$ miles?

Mr. McCLANAHAN.—Do you mean the sounding as shown by the map, or the actual sounding when you take into consideration the tide?

Mr. DENMAN.—I mean the sounding as shown by the map.

A. I would like to say that I took the mile and a half just from the edge of the land.

Q. Do you remember the question being put to you—

A. (Intg.) Well, it doesn't make much difference, it will be from the light; it will be there. It does not show any [1017—893] sounding on the chart.

Q. How far is that from the point drawn by your course as drawn by the soundings and the whistle-bearings? A. Half a mile.

Q. Now, let me take your other chart on which the soundings are figured more carefully?

Mr. McCLANAHAN.—I object to that statement

(Testimony of Olaf Lie.)

going into the record.

Mr. DENMAN.—Well, I will take it back because it does not show as I stated. There are no soundings on the chart that Captain Lie offered to the Court as showing where his vessel was. Most of the drawing is off the chart entirely.

Mr. McCLANAHAN.—Well, I object to that statement. The map certainly does show some.

Mr. DENMAN.—Not these portions of the course upon which the distance from Pt. Reyes is calculated.

I want to offer this map in evidence as “Claimant’s Exhibit, Captain Lie, No. 1.”

(An adjournment was here taken until to-morrow, Saturday, July 29, 1911, at 10 A. M.) [1018—894]

Saturday, July 29, 1911.

OLAF LIE further cross-examination, resumed:

Mr. DENMAN.—Q. Captain, will you step here a moment please. Will you draw from the Pt. Reyes whistle the bearing as you say it was at 2:30 o’clock?

Mr. McCLANAHAN.—Draw it on what?

Mr. DENMAN.—On this exhibit, “Claimant’s Lie No. 1”?

A. (Witness does as directed.)

Q. Now, mark the point of intersection with the line “M F” by the letter “I”?

A. (The witness does as directed.)

Q. Now, will you give me the distance between the point “I” and the point “F”—about 2½ knots, is it not? A. No, sir, 2¾.

Mr. McCLANAHAN.—Let the witness answer,

(Testimony of Olaf Lie.)

Mr. Denman, please; he is doing the measuring.

Mr. DENMAN.—Q. About $2\frac{3}{8}$ knots?

A. About $2\frac{3}{8}$.

Q. It is a fairly liberal $2\frac{3}{8}$, is it not?

A. It is about accurate, according to that.

Q. So that, Captain, judging the rate at which you were traveling as estimated by your three-whistle bearings and three soundings, between the hour of 2:30 and the hour of 3 o'clock—half an hour—you must have been traveling at about the rate of $7\frac{1}{2}$ knots an hour; that is correct, is it not?

A. No, sir, it is not correct.

Q. What is there incorrect about it, judging from the whistle-bearings and the soundings? And I am not asking you now for [1019—895] all the data that you have, I am simply saying, judging by whistle-bearings and soundings?

A. You said from 2:30 o'clock.

Q. From 2:30 until 3 o'clock.

A. But take the two bearings at 2:30—that is $2\frac{3}{8}$ knots in 20 minutes.

Q. $2\frac{3}{8}$ in 20 minutes; what would that be per hour?

A. That is three times as much.

Q. Well, what would that be? A. $6\frac{6}{8}$ knots.

Q. $2\frac{3}{8}$ — A. It would be $9\frac{1}{8}$ ths.

Q. It would be $7\frac{1}{8}$, would it not?

A. Yes, $7\frac{1}{8}$.

Q. And as shown here between the second bearing, that is, between "F" and "E" on the chart, you were going at the rate of $7\frac{7}{8}$, were you not?

A. No, sir, I was not.

(Testimony of Olaf Lie.)

Q. As shown by the distance between "F" and "E," based upon the soundings and the whistle-bearings you were, were you not?

A. No, sir, that is not wrong. Let me explain—

Mr. McCLANAHAN.—Q. You say that is not wrong? A. That is not right.

Q. You said "wrong"?

A. I meant right. No, that is not right. Let me explain—that distance between the two bearings, at 2:50 and at 3 o'clock is not $1\frac{1}{4}$, as stated yesterday; I think it is nearer $1\frac{1}{8}$. If you shall convert that into an hour and take a quarter you will get too much because you have to take that exact if you want to convert it into an hour. If you measure it you will not get over $1\frac{3}{16}$ at the utmost.

Q. And you will cover six times that distance in an hour, will you not? A. Yes. [1020—896]

Q. And six times $1\frac{3}{16}$ is what? A. $7\frac{1}{8}$.

Q. So that the rate of speed as shown by three soundings and three whistle-bearings here, between the hour of 2:30 and 3 o'clock, is $7\frac{1}{8}$ miles an hour?

A. Taking the soundings. That was taken after we passed, yes.

Q. Now, we will take the soundings as taken before you passed. You recollect the first officer testifying that you signaled to him to come up on the bridge at 2:45?

A. I don't know what time it was. I waved my hand to him after we passed the light, after the light was passed, and about the time the light was abeam. I wanted to call him up to tell me.

(Testimony of Olaf Lie.)

Q. You recollect that he testified that your waving to him is what led to his being relieved by the other officer at 2:45?

A. I don't think so, no. He called the second officer to relieve him before I waved my hand to him, I think. I don't think that waving my hand had anything to do with the second officer relieving him.

Q. He was taking soundings at the time you waved your hand to him, was he not?

A. I don't remember where he was at the time I waved my hand. I could not say.

Q. You cannot recollect that?

A. I think he had left the poop when I waved my hand to him; I think so.

Q. Do you recollect this testimony taken in your presence at Mr. McClanahan's office:

“Q. What did you go on the bridge for?

A. Because the captain was waving his hands. I thought he saw something. I was going to find out, and I then told [1021—897] Mr. Larson to relieve me, the second officer.

Q. Then when you went on the bridge what did you find out?

A. I heard the point signals from Pt. Reyes, which I could not hear on the poop.”

Do you recollect that testimony of Mr. Halverson, the first officer?

A. No, I don't recollect it. I don't recollect now exactly that he said that.

Q. But you were there at the time this deposition was taken? A. I was there, yes.

(Testimony of Olaf Lie.)

Q. And you were the libelant in this case and you were there with your attorney, were you not?

A. Yes.

Mr. McCLANAHAN.—That appears a number of times in the record already, Mr. Denman.

Mr. DENMAN.—Well, all right.

Q. Are you in a position to say now that Mr. Halverson was mistaken?

A. No, I don't know. The only way I think he called Larsen to relieve him was because he had something to look at around the decks and—

Q. (Intg.) He says here the reason he did it was because you had beckoned to him and he then called Larsen to relieve him.

A. Well, I don't know anything about that.

Q. If Larsen testified that he took all the soundings from 2:45 on, you have nothing of your own personal knowledge to contradict him, have you?

A. No, I have not, absolutely; that is to say, I did not pay any attention to the soundings taken by Larsen at all because when the first officer came on the bridge, he came on the bridge just a few minutes after I waved my hands to him and he was on the bridge after we passed it, after we passed Pt. Reyes, and I had shaped my course; [1022—898] so the soundings I received from the first officer, I think, that he had taken himself. That is my personal opinion. He did not say anything else.

Q. So that if he had taken them himself and Larsen had taken them from 2:45 on, the soundings that he took must have been prior to 2:45?

(Testimony of Olaf Lie.)

A. Well, that is so, if that is the truth.

Q. And the soundings he gave you were in the neighborhood of 29 fathoms?

A. Yes. There were several soundings less than 30 but I don't remember how many of them.

Q. He had several soundings less than 30?

A. Yes, I remember that he said the least sounding he had was 28; I remember that too.

Q. The least sounding he had was 28. But before you had received any sounding you had changed your course?

A. Oh, yes, I had changed my course because then I had had my bearings. I did not lay them off but I had my Ft. Point bearing as well just to check up, so I would see appromixately how far I went off.

Q. Who was it took the first bearing?

A. I took the first bearing.

Q. What time did you take it?

A. I took it half a minute or a minute after 2:30. I did not exactly look at the clock but I took the bearing—first I heard a whistle, I heard it between 3 and 4 points on the port bow, and then I just looked at the compass and watched for the next bearing, and that was east by north.

Q. You remember at the taking of these depositions that Mr. Bjorn testified that when he first saw the "Beaver" on that day on your port bow, she was coming at right angles and continued [1023—899] at right angles until she struck; you recollect that testimony, don't you?

A. No, I don't recollect it. I have not looked over

(Testimony of Olaf Lie.)

it at all. I don't recollect it.

Q. If that testimony was given, you heard it while you were there, did you not?

A. Oh, yes, I did; I was in there, of course.

Q. Well, you were following it very closely, were you not?

A. Well, I was sitting over in one corner. I did not pay much attention to it, to tell you the truth because I didn't think I had anything to say at all. When we have a court in Norway, if I have my declaration taken in Norway, the captain has no right to listen to his witnesses at all.

Q. Well, you remember you sat alongside of Mr. McClanahan for a good long time?

A. No, that was only when Hansen was being examined through the interpreter who didn't know anything about the language.

Q. Don't you remember you sat very close to Mr. McClanahan all morning?

A. I sat right close to the door all the time the witnesses were being examined.

Q. But between the morning and the afternoon you as the libellant, had abundant time to see your counsel, did you not?

A. Yes, but I didn't refer to that—

Mr. McCLANAHAN.—I object to that question as immaterial. There must be an end to this case, Mr. Denman.

Mr. DENMAN.—All right.

Q. Bjorn was standing beside you on the bridge, was he not?

(Testimony of Olaf Lie.)

A. Yes; that is, he was not standing absolutely alongside of me.

Q. But he was near you?

A. He was near me; he was on the [1024—900] bridge.

Q. And his testimony that he saw the vessel at right angles at first and that she continued at right angles until she struck is not in accord with your testimony, is it?

Mr. McCLANAHAN.—I object to that upon the ground that the witness has not said that he recognized that as Bjorn's testimony. If you put the question in another way, for instance, if he said that then it is not in accord, I will withdraw my objection. I submit that the record shows just what he said.

Mr. DENMAN.—I will read it:

“Q. Now, as I understand it, at 3:15 you saw the ‘Beaver’ coming on you at about right angles and you say she seemed to have speed on at that time? A. Yes, sir.

Q. And she continued and finally struck you at right angles about 70 feet abaft the bow?

A. 70 feet abaft the bow?

Q. Yes. A. Yes, sir.”

You recollect that testimony, do you not?

A. Well, he did not say that, you suggested it to him, didn't you?

A. Of course I suggested it to him.

A. Well, he simply said yes to that. He did not say so.

Q. You noticed I suggested it to him at the time, did you not?

(Testimony of Olaf Lie.)

A. Well, I didn't pay any attention to it at all, I didn't think of it.

Q. Now, if that were the case, Captain, if the vessel were seen at 3:15 at right angles and continued at right angles until she struck, your vessel must have been pointed about due south at 3:15, must she not? [1025—901]

Mr. McCLANAHAN.—I called the attention of counsel to the fact that that is not a correct statement of the evidence; his own suggestion was "about" right angles and not "at right angles."

A. And I think it cannot jar either because I think the second or third officer said he sighted the "Beaver" three points on our port bow and if she then was at right angles to the ship she would have passed the ship, would she not?

Q. Unless she turned to starboard.

A. If my vessel was at rest she would strike at right angles.

Q. If your vessel was also turning to starboard she would, would she not, Captain?

A. Yes, but my vessel was going astern.

Q. Your vessel went astern 100 feet, did she not?

A. I could not say the exact feet.

Q. Well, about that. And your vessel you claim was turning to starboard?

A. My vessel swung to starboard, yes, sir.

Q. Now, if when one vessel sighted the other they were at right angles to one another, you say there could not have been a collision unless the "Beaver" was turning to starboard and you were turning to

(Testimony of Olaf Lie.)

starboard, there could not have been a collision at the angle the collision occurred at?

A. If she appeared at right angles the first time we saw her, I mean. I cannot really understand that at all. I don't understand that at all, how it could appear.

Q. There is a pretty strong agreement amongst the witnesses that it was that way, is there not?

A. I really did not look at my ship and pay any attention to the "Beaver" with regard to the right angle. I just [1026—902] said that the "Beaver's" starboard side broadened a bit to me as she came along and I thought finally that perhaps she would go ahead of us. I was wishing it too all the time as my vessel was going astern. When I first sighted her I thought she was pointing somewhere about our amidships.

Q. How could she be pointing to your amidships if she were 2 points on your bow when you first saw her? A. Oh, she could point that way.

Q. And what was your course at that time, according to your statement?

A. Somewhere about 55—she had really no course but she was heading that way, I should say south 55, or somewhere around there. She was a point off her course.

Mr. McCLANAHAN.—Q. Fifty-five you say?

A. Yes, somewhere around there. That is where she was heading when the "Beaver" loomed in sight, somewhere around there; I just think that.

Mr. DENMAN.—Q. And 2 points on your bow,

(Testimony of Olaf Lie.)

you on that course, the "Beaver" was pointing to your amidships?

A. Somewhere around there. I could not say exactly where it was but it was somewhere around there. She was pointing farther off than the stern.

Q. Have you figured that out, have you plotted that out?

A. No, I have not plotted it at all. That is only in my mind. I have not plotted it out at all.

Q. The "Beaver" at that time, according to all the testimony, was traveling somewhere about west, perhaps about 2 degrees above or below west, but in that neighborhood?

A. Well, about west; I could not say exactly.

Q. Captain, the chart you have prepared, Libelants' Exhibit 1, and the chart you have drawn for me, Claimant Lie No. 1, [1027—903] the bearings are drawn on the chart to the whistle itself and not to the point, are they not—on both of them?

A. Yes, sir. But the distance on exhibit 1, I think I measured the distance from the land. I did not measure it from the whistle. I measured the distance from the land. I think I did. It would not be very much different, I don't think.

Q. Now, let me ask you, Captain, the distance as shown by the whistle-bearings and soundings, on Claimant's Exhibit Lie 1, at 3 o'clock, between the Pt. Reyes whistle and your vessel is what—it is 2 and what? A. $2\frac{3}{8}$ knots.

Q. You get, I believe, on your own calculation $17\frac{8}{9}$?

A. That is from the land, but it will be 2 miles

(Testimony of Olaf Lie.)

from the light, I think; I think it would, approximately.

Q. Well, let us see, Captain. A. It is $17\frac{1}{8}$.

Q. What is the distance you get from the point "F" to the light, Captain?

A. $21\frac{1}{8}$. And on my exhibit it is $13\frac{1}{4}$ from the light.

Q. What did you state in your original log as to the distance?

A. $11\frac{1}{2}$. That is as near as I got it. I did not look at any chart when I made that log up. That is the distance I had roughly on the chart, $11\frac{1}{2}$ miles, when I was on board the ship.

Q. Do you recollect testifying anything about the effect of the sea being astern on your vessel, while before the United States Inspectors?

A. No, I don't recollect that I said anything about it, no.

Q. You don't recollect that you said the sea being astern would have any effect on your stopping,—before the United States Inspectors? [1028—904]

Mr. McCLANAHAN.—Call his attention, Mr. Denman, to the specific evidence; that will be the fairer way to get at it.

A. I don't exactly remember it.

Mr. DENMAN.—Q. Do you recollect this:

"Q. Was your ship dead in the water at that time?

A. I was looking over the side. She had little headway. The sea was astern, and she had headway and I did not want to blow two whistles

(Testimony of Olaf Lie.)

before she was done."

Do you recollect that testimony?

A. Well, I don't really recollect I said so, but if it is there I might have said so. I would like to explain a little about this, could I?

Q. Yes, go on and explain.

A. You have referred to the testimony so many times. You must remember that I am not as good to explain myself in the English language I ought to be, and you know many times you put in a word which really is not as good as it ought to be. And so many times you have referred to this testimony—the man who took it down sat across the table and he might not have caught what I said exactly.

Q. Captain, don't you know you speak English perfectly, that you enunciate it perfectly, and that you have been the marvel of every man who has listened to you?

Mr. McCLANAHAN.—Not on the subject of English. The marvel of Captain Lie is in his memory of these things.

Mr. DENMAN.—I want to say that every man who has listened to Captain Lie has marvelled at his English and his diction.

Mr. McCLANAHAN.—Well, that is a remarkable statement. Captain Lie does speak English imperfectly, according to my knowledge. [1029—905]

Mr. DENMAN.—I don't think this record will bear you out in that statement.

Mr. McCLANAHAN.—Yes, it will. There is an example of that in the record this morning when he

(Testimony of Olaf Lie.)

said "wrong" when he meant "right"; I corrected him on it, and the record shows it.

Mr. DENMAN.—If you want to assert that Captain Lie has that slight-knowledge of the English language, while it might be true this record does not show it.

Mr. McCLANAHAN.—I want to assert that Captain Lie often uses unhappy expressions to express himself.

Mr. DENMAN.—Well, that might be true too.

Q. I will read this again to you:

"Q. Was your ship dead in the water at that time?

A. I was looking over the side. She had little headway. The sea was astern, and she had headway and I did not want to blow two whistles before she was done."

Can you explain that on any basis of a want of knowledge of the English language?

A. No, I may have said, I may have put that in; if it is there I might have done so. The inspectors you know might as well have jumped at me at these questions, and it seems to be they wanted me to blow two whistles as soon as I stopped my engines and I told them I was not allowed to do that according to the rules of the road.

Q. Will you kindly take the record and show where the inspectors jumped you after that? There is the record (handing). A. Well, he said once—

Q. (Intg.) Just take the record and show at that point where they jumped you.

(Testimony of Olaf Lie.)

A. The record does not show any jumping. It shows once when Mr. Bulger said "when your engines are stopped the ship is virtually stopped."
[1030—906]

Q. That was 5 minutes later, was it not, as the record shows?

A. I don't think the record shows how many minutes it was.

Q. Who was interrogating you at the time this question was asked you—do you know?

A. I don't know; I don't remember.

Q. It was Mr. Bolles, was it not?

A. I don't know; I don't remember.

Mr. DENMAN.—Mr. McClanahan, will you admit that the record shows that?

Mr. McCLANAHAN.—I don't see the materiality of it.

Mr. DENMAN.—Well, will you admit that at the time this question was asked—

Mr. McCLANAHAN.—What question are you referring to? I did not hear you state any question. You read an answer but I did not hear any question.

Mr. DENMAN.—This was the question:

"Q. Was your ship dead in the water at that time?

A. I was looking over the side. She had little headway. The sea was astern and she had headway and I did not want to blow the two whistles before she was done."

Will you admit that was a question put by Mr. Bolles before any questions were put by Mr. Bulger?

(Testimony of Olaf Lie.)

Mr. McCLANAHAN.—I will take your word for it if the record shows that.

Mr. DENMAN.—The record does show it.

Mr. McCLANAHAN.—We will not dispute it although I fail to see its materiality.

Mr. DENMAN.—Will you admit that there were at least 25 or say 20 questions asked by Mr. Bolles before Mr. Bulger spoke to Captain Lie, after that question? [1031—907]

Mr. McCLANAHAN.—I fail to see the materiality of the requested admission, but if the record shows that, and you say it does, I will make the admission.

Mr. DENMAN.—The record does show it.

Mr. McCLANAHAN.—You are prolonging this examination so, Mr. Denman, that I am going to excuse my witnesses until Monday.

Mr. DENMAN.—I will be through in probably 5 minutes.

Mr. McCLANAHAN.—Well, I will have one witness here for you.

Mr. DENMAN.—Q. Captain, did you tell the officer on the bridge with you, that the vessel was going a little ahead because there was a heavy swell from astern?

A. I don't think I told the third officer about that; he was on the bridge and he knew the way it was.

Q. Did you tell him that?

A. I don't think I did.

Q. Do you recollect his testifying in your presence before the United States Inspectors as follows:

“Captain said he is going little ahead because

(Testimony of Olaf Lie.)

there was heavy swell from astern."

A. I did not say that to him.

Q. Do you recollect his testifying to that before the United States Inspectors?

Mr. McCLANAHAN.—I submit that the answer of Bjorn does not necessarily say that Captain Lie said it was because there was a heavy swell astern.

A. (Continuing.) I could not exactly recollect it now at this time but if the record says it I expect he said so.

Mr. DENMAN.—You will take my word for it, Mr. McClanahan, that the record shows it? [1032—908]

Mr. McCLANAHAN.—Why, yes, if it is material.

Further Redirect Examination.

Mr. McCLANAHAN.—Q. Captain Lie, on this very extensive further cross-examination of you, and with reference to Libelants' Exhibit 1 there appears to be a discrepancy between the actual measurement of distance between the "Selja's" position at 2:50 and the "Selja's" position at 3 o'clock, and the amount in feet shown on your exhibit. Do you understand what I mean? A. I think I understand.

Q. In other words, the exhibit shows that the distance between the point at 2:50 and the point at 3 P. M., is 6,080 feet, and when you scaled that on the map it did not scale 6,080 feet—is that correct?

A. No, it did not, I think I got a little less.

Q. Now, Captain, will you please explain, if you can, that discrepancy in distance?

A. Well, I would like to just say that this chart,

(Testimony of Olaf Lie.)

or Exhibit 1, is only based entirely upon the first two bearings taken by me; that is to say, the bearing I had east by north, at 2:30 and abeam at 2:50; the distance run by the log showed two miles, and the distance off that Pt. Reyes is fixed thereby. Now, up to 3:10—up to 3 o'clock, I mean—we also ran a mile by the log exactly, but at that time the first officer took a bearing off the Point.

Q. At what time?

A. At 3 o'clock. Now, the distance put down here between these two bearings—

Q. What two bearings?

A. At 2:50 and at 3 o'clock is exactly what the log showed, but the distance between the bearings shows a ship-length less.

Q. As shown by the bearings themselves?

A. The bearings themselves—that is all. Because I did [1033—909] not alter the bearing. I took the bearing as the chief officer gave it to me and plotted it on the chart, and it shows the distance between the two bearings at 2:50 and at 3 o'clock is a ship-length less than the log showed.

Further Recross-examination.

Mr. DENMAN.—Q. The course shown on that map between 2:50 and 3 o'clock does not show soundings on the chart of 34 fathoms, does it?

Mr. McCLANAHAN.—I object to that. The map shows for itself.

Mr. DENMAN.—The map shows no soundings at all.

Mr. McCLANAHAN.—Exactly. I say it speaks

(Testimony of Olaf Lie.)

for itself. Now you are asking him if the map shows any soundings.

Mr. DENMAN.—I mean the soundings shown by the United States map covering that distance that we have in evidence here.

Mr. McCLANAHAN.—We will admit that the soundings are not on this map at that point, on the map Libelants' Exhibit 1.

Mr. DENMAN.—Now, just repeat my question, Mr. Reporter.

(Question read by the Reporter.)

A. It does not show any soundings on that chart.

Q. That course does show that you were well inside of the 30-fathom curve on the smaller map of that district, does it not?

Mr. McCLANAHAN.—I object to that as calling for the conclusion of the witness. The map speaks for itself. It is improper recross-examination.

A. It shows that it is a little inside of the curve, yes.

Mr. DENMAN.—Q. About a half mile distance, is it not?

Mr. McCLANAHAN.—The same objection.

A. I think it is about three-eighths; I think it is, somewhere about that. [1034—910]

Mr. DENMAN.—Q. And that three-eighths of a mile is to the nearest point where conceivable you could find 34 fathoms?

Mr. Mr. McCLANAHAN.—I object to that as improper cross-examination.

A. The chart does not show any sounding at all.

(Testimony of Olaf Lie.)

It is only guesswork to say if it is 34, or anything else, because the chart, as I say, does not show any soundings.

Mr. DENMAN.—Q. It shows the 30-fathom curve, does it not?

A. It does, approximately.

Q. Is it your theory that the 30-fathom point marks the point where the bottom of the sea drops 4 fathoms?

Mr. McCLANAHAN.—That is objected to as improper recross-examination.

A. It may, sometimes.

Mr. DENMAN.—Q. Do you mean to say it shows all the way around, the drop at that point?

A. It may because sometimes they drop more than 4 fathoms, sometimes they drop 7 or 8 or 10 fathoms on the bank.

Q. You think that 30-fathom curve represents a bank, do you?

Mr. McCLANAHAN—I object to the question as not proper recross-examination.

A. It represents shallow water, yes.

Mr. DENMAN.—Q. Does it not merely represent a point where the gradual shallowing bottom has dropped to 30 fathoms?

Mr. McCLANAHAN.—That is objected to as improper recross-examination.

A. Nobody can tell.

Mr. DENMAN.—Q. That is the way you read the chart here, is it?

A. It depends on where the sounding was on the

(Testimony of Olaf Lie.)

chart. If the soundings are too far apart and it shows [1035—911] great difference, then nobody can say what is between the other soundings, before you take and sound it yourself.

Q. If you should find the 30-fathom curve, and the first sounding outside that curve in a certain direction was 34 fathoms, would you or would you not expect the bottom to gradually deepen from 30 to 34 fathoms?

Mr. McCLANAHAN.—I object to the question as being improper recross-examination.

A. I could not expect anything.

Q. You could not expect anything?

A. I might have dropped the lead on something higher and away from there it made 3 or 4 fathoms difference. It is hard to say.

Mr. DENMAN.—Mr. McClanahan, I understand that the data is in Washington covering this entire territory, and they are very closely plotted soundings. If my information which I have recently received is correct we will offer, either at the trial, as a matter that the Court can take judicial knowledge of, or to reopen the case to put those soundings in.

Mr. McCLANAHAN.—I will say, in reply, that you may make your offer at the appropriate time and let the Court pass upon it.

Mr. DENMAN.—That is all.

Mr. McCLANAHAN.—I understand now that the respondent rests?

Mr. DENMAN.—Yes.

(Testimony of Mrs. Johanne Lie.)

Mr. McCLANAHAN.—We will call Mrs. Lie. Libelant is now offering rebuttal evidence. [1036—912]

[Testimony of Mrs. Johanne Lie, for Libelant (in Rebuttal).]

JOHANNE LIE, called for libelant in rebuttal, sworn.

Mr. McCLANAHAN.—It is understood that Mrs. Lie has been sworn by the Commissioner through her husband acting as interpreter?

Mr. DENMAN.—Yes.

Mr. McCLANAHAN.—And now I ask that you waive the oath of Mr. Andreas Bjolstad as interpreter.

Mr. DENMAN.—Oh, yes.

Mr. McCLANAHAN.—Q. Mrs. Lie, what is your full name?

A. Johanne Lie.

Q. You are the wife of Captain Olaf Lie, former master of the “Selja,” are you? A. Yes, sir.

Q. You were on board the “Selja” at the time of the collision with the “Beaver”? A. Yes, sir.

Q. Do you remember, Mrs. Lie, rescuing a man who had fallen into the sea from one of the “Beaver’s” boats? A. Yes, sir.

Q. Where were you at the time you rescued the man?

A. Just alongside the steamer “Beaver.”

Q. In one of the “Selja’s” boats? A. Yes, sir.

Q. After you had rescued the man from the sea, did he get into your boat? A. Yes, sir.

(Testimony of Mrs. Johanne Lie.)

Q. Did you notice whether the man had been drinking, or not?

A. I noticed a strong odor of liquor.

Q. From the breath of the man whom you had rescued?

A. Yes, sir.

Q. How close were you at that time to the man that you noticed his breath?

A. He was placed just at my side in the boat.
[1037—913]

Cross-examination.

Mr. DENMAN.—Q. How long had he been in the water?

A. I cannot say.

Q. How long had you seen him in the water?

A. I saw him just as he came past the boat.

Redirect Examination.

Mr. McCLANAHAN.—There is just one question which I omitted to ask on the direct: did he say anything to you as you pulled him into the boat, Mrs. Lie?

A. He said, "Help yourself, lady."

Q. Is that all? A. Yes, that is all he said.

Mr. DENMAN.—Mr. McClanahan, will you admit that the record before the United States Inspectors shows that Captain Lie, in response to the following question: "How were you heading when you saw the other ship? Do you recollect"? answered We were off the coast. The third officer was logging south 65 east magnetic. The moment she struck I should think he came $\frac{1}{4}$ of a point south. His wheel was on starboard quarter."

(Testimony of David W. Dickie.)

Mr. McCLANAHAN.—I make that admission. I understand you want it for the purpose of applying it to Captain Lie's examination on that point?

Mr. DENMAN.—Yes.

[Testimony of David W. Dickie, for Libelants
(Recalled in Rebuttal).]

DAVID W. DICKIE, recalled for libelants in rebuttal.

Mr. McCLANAHAN.—Q. Mr. Dickie, since the examination of your father, and of Mr. Heynemann and yourself, and on the respondent's case, a correction has been made as to one of the items of data upon which your hypothetical questions were based. [1038—914] Do you remember that it was stated to you that you were to assume that the "Beaver" on her trial trip made 17.6 knots per hour? Now, that has been corrected by Mr. Frey for the respondent and it should be 17.06. Now, I hand you Respondent's Exhibit No. 1, which is a copy of the questions put to the experts that I have named, and I will ask you which of those questions that change in the data affects, giving the numbers of the questions.

A. That affects the answer to question No. 16, Question No. 17,—it makes a slight correction—

Q. (Intg.) Never mind stating the extent of the change now; just state what answers must be changed. You say 16 and 17. What is the other?

A. It affects the answer to question 16, 17 and 27, and makes corrections in questions 18, 19 and 21.

Q. Take question 16 as the first one that is affected

(Testimony of David W. Dickie.)

by the change in the data; what was the original answer to that?

A. The original answer to that was 6.794 per cent. The new answer would be 9.654 per cent.

Q. Now, take question 17 and make the appropriate changes in that.

A. To question 17 the original answer was 15.76 knots; the new answer will be 15.275 knots.

Q. Now, take question 27.

A. To question 27, it is possible but not probable. The previous answer was "no."

Q. Now, take question 18.

A. The answer is not affected but the first line of the question should read: "If the slip of her propeller was 9.654 per cent, making 17.06 knots," instead of "if the slip of her propeller was 6.79 per cent, making 17.6 knots." [1039—915]

Q. But the answer is not affected?

A. The answer is not affected.

Q. Now, take question 19.

A. The seventh line should read: "trial trip conditions would be 15.28 knots at 77 revolutions," instead of "trial trip conditions would be 15.76 knots at 77 revolutions."

Q. Is the answer to question 19 affected?

A. The answer to question 19 is not affected.

Q. Now, take question 21.

A. In question 21 the second line should read: "The 'Beaver' made 17.06 knots per hour, would it be possible that," instead of "The 'Beaver' made 17.6 knots per hour, would it be possible that."

(Testimony of David W. Dickie.)

Q. Is the answer unaffected?

A. The answer to question 21 is unaffected.

Q. Now, have you stated all of the hypothetical questions that have been affected by the change in the data suggested to you?

A. So far as I know we have, yes.

Cross-examination.

Mr. DENMAN.—Q. Turn to Question 15, Mr. Dickie; as I understand it, you and your father and Mr. Heynemann worked on that question together and you came to the conclusion that when the helm is hard-a-port, under the conditions described in question 15, the steamer would swing to port?

Mr. McCLANAHAN.—I object to that as improper cross-examination, having no reference whatever to the testimony given by the witness; it has no reference whatever to the changed data and is simply reopening the case for the claimant. I submit that there should be an end to this examination, Mr. Denman.

Mr. DENMAN.—Q. How does this change in data affect the [1040—916] answer to question 15?

Mr. McCLANAHAN.—Do you withdraw the other question?

Mr. DENMAN.—No, I do not withdraw it.

Mr. McCLANAHAN.—Then I submit that this question is improper because the witness has not stated that it affects the answer to 15.

Mr. DENMAN.—Q. How, if at all, does it affect the answer to question 15?

Mr. McCLANAHAN.—The same objection.

(Testimony of David W. Dickie.)

A. I cannot see that the change in data affects the question in any way at all.

Mr. DENMAN.—Well, now, let me see: how would she swing, under your theory of the case, and after the result of your consultation with your two confreres, how did you conclude she would swing with her helm hard-a-port under the conditions described in question 15?

Mr. McCLANAHAN.—I object to the question as improper cross-examination of the witness, having no reference whatever to the change of the data, for which he solely was called. You may answer the question, Mr. Dickie, I have now stated my objection.

Mr. DENMAN.—Q. Cannot you answer right off-hand which way she would swing?

A. Read the question again, please.

(Question read by the Reporter.)

Mr. McCLANAHAN.—I desire to have my objection noted again. I want to follow this right up.

A. The vessel would be swinging to port under those conditions.

Mr. DENMAN.—Q. That is your scientific opinion on the [1041—917] subject, is it?

A. Yes, sir.

Q. You never tried the experiment yourself, did you?

Mr. McCLANAHAN.—The same objection to that question.

A. Not on a ship the size of the “Beaver”; no, sir.

Mr. DENMAN.—Q. Did you ever make it on any size of a vessel over 50 feet in length?

(Testimony of David W. Dickie.)

Mr. McCLANAHAN.—The same objection.

A. Yes, 64 feet long.

Mr. DENMAN.—Q. But nothing beyond 64 feet?

Mr. McCLANAHAN.—The same objection to that question.

A. No, sir.

Mr. DENMAN.—Q. The two vessels were not comparable in power, were they?

Mr. McCLANAHAN.—We make the same objection to that.

A. The vessel that I had had more power in proportion to her size than the “Beaver” had.

Mr. DENMAN.—Q. So there was a difference in proportion?

Mr. McCLANAHAN.—We make the same objection.

A. A slight difference.

Mr. DENMAN.—Q. There was a slight difference?

Mr. McCLANAHAN.—The same objection to that.

A. Yes, sir.

Mr. DENMAN.—That is all.

(An adjournment was here taken until Monday, July 31, 1911, at 11 A. M.) [1042—918]

Monday, July 31, 1911.

[Testimony of A. C. Johnson, for Libelants (in Rebuttal).]

A. C. JOHNSON, called for the libelants in rebuttal, sworn.

Mr. McCLANAHAN.—Q. What is your name, Captain?

(Testimony of A. C. Johnson.)

A. My name is A. C. Johnson.

Q. What is your business?

A. Captain; sea faring man.

Q. You are a master? A. Yes, sir.

Q. Where do you live?

A. 1118 Montgomery Street, San Francisco.

Q. How long have you lived here?

A. You mean in San Francisco?

Q. Yes. A. 36 years.

Q. What is your age? A. 52.

Q. How long have you been following the sea?

A. Since I was 14 years old.

Q. What papers do you hold?

A. I hold master and pilot.

Q. For this coast?

A. For the bay and rivers and also for the gulf of the Farallones.

Q. What boat are you now in command of?

A. I am in the tug "Liberty."

Q. You have been master of fishing boats, have you not? A. Yes, sir.

Q. What was your last command of a fishing boat?

A. The tug "Liberty" was fishing the last time.

Q. And what before the tug "Liberty"?

A. The "Blanco."

Q. How long have you been fishing?

A. Well, altogether, somewheres around 14 years.

Q. And where do you fish, generally?

A. Well, at different times we fish north and at other times south. [1043—919]

Q. South of what?

(Testimony of A. C. Johnson.)

A. South of San Francisco, down toward Pt. San Pedro and Halfmoon Bay.

Q. And north of what?

A. North of Duxbury Reef, up off Pt. Reyes, half-way between the Farallones and Pt. Reyes.

Q. And you have fished, you think, for about 14 years? A. Yes, fully that, altogether.

Q. How often do you fish?

A. Well, while we are out fishing we go out every day, six trips a week, except in the winter time when it happens to be too rough, but that don't happen but very seldom.

Q. Do you mean that for 14 years you have made six trips a week fishing? A. Yes.

Q. Have you ever had occasion to pass through the North Channel?

A. Pretty much twice a day, when we are fishing north.

Q. How many times?

A. Well, that I could not state. The biggest part of the time we fish north. In the winter time we fish north all the time mostly and we pass through the North Channel out and in pretty much every day.

Q. Then you have passed through the North Channel hundreds of times, have you? A. Yes, sir.

Q. When you are fishing north what is your last point of departure before you strike for the fishing banks?

A. Our last point is Duxbury Reef.

Q. Do you know where Red Buoy No. 2 is?

A. Yes, sir.

(Testimony of A. C. Johnson.)

Q. On what side of the North Channel going out is Red Buoy No. 2?

A. Red Buoy is on our port side going out.

Q. You are familiar, are you, with the sea conditions along that north course, between the Channel and Pt. Reyes? A. Yes, sir. [1044—920]

Q. After leaving Duxbury Reef as your point of departure what course do you generally take?

A. Well, that is all different; it depends on where we go. We don't go in the same place every day you know; we generally have a boss fisherman, and he tells you when you leave San Francisco where you are going, where he wants to go.

Q. Do you remember the 22d day of November, 1910, Captain? A. Yes, sir.

Q. What makes you remember that?

A. Well, with reference to this collision here I suppose. I remember it well. I had a little bit of experience of it.

Q. That is, you remember the day because of the collision? A. Yes, sir.

Q. The collision between the "Beaver" and the "Selja"? A. Yes, sir.

Q. What time did you leave San Francisco on that day to go fishing?

A. I left about 20 minutes to 4 o'clock in the morning.

Q. What time did you return to port?

A. Somewhere around 5 o'clock.

Q. In the afternoon?

A. Yes, in the afternoon.

(Testimony of A. C. Johnson.)

Q. So you were at sea all of that day?

A. Yes, sir.

Q. Do you remember the condition of the weather?

A. Yes, it was foggy going out in the morning, it was foggy all day, and also coming in in the afternoon.

Q. Do you remember the condition of the sea?

A. Well, it was pretty smooth; nice smooth weather; no wind.

Q. Did that condition of sea last all day?

A. All day. From when we went out in the morning until we came back the condition was just about the same thing. We went out the North Channel [1045—921] in the fog and came back in the same condition; no swell on.

Q. Did you pass the Duxbury Buoy in going out that morning? A. Yes, sir.

Q. Did you see it? A. Yes, sir.

Q. How close did you pass to it?

A. Within 100 feet probably.

Q. Was it whistling?

A. Just a faint whistle, just barely so you could hear it when you were alongside of it.

Q. When you left Duxbury whistle which way did you steer your course going out?

A. I steered west by south half south going out from Duxbury Reef.

Q. What time did you leave the fishing banks, if you remember, that afternoon?

A. Well, that I don't remember exactly, somewhere after 12 o'clock.

(Testimony of A. C. Johnson.)

Q. What did you direct your course to after leaving the banks?

A. When I left fishing I steered east by north half north until I picked up the Duxbury whistle again.

Q. How close did you come to Duxbury whistle on your return? A. About 100 feet again.

Q. What was the condition of the whistle then as to sounding?

A. About the same thing, a faint sound.

Q. Captain, do you know how long it takes your vessel generally to run from Buoy No. 2 to the Duxbury whistle?

A. Yes, it takes me—well, there is a difference in the condition of the tides; it took me from Red Buoy to Duxbury Reef an hour and 20 minutes, an hour and 25, and sometimes an hour and a half. There is a difference in the condition of the tides.

Q. From the North Heads, or from No. 2 Buoy?

A. From No. 2 Buoy. [1046—922]

Q. How large a boat was the “Blanco”?

A. She is, I believe, 22 tons registered.

Q. How long is she?

A. 62 feet, I think—I am not sure—but close on to that, something over 60.

Q. Did the swell on the morning of November 22, 1910, interfere with the speed of your boat?

A. No, sir.

Q. Did you make the run from Red Buoy No. 2 to Duxbury Reef in the usual time, considering the swell? A. Yes, sir.

Q. Captain, when did you pass the buoy on your

(Testimony of A. C. Johnson.)

return that day?

A. Well, that I could not say, what time it was, because we don't regularly keep no regular log; we simply have a little book for our own benefit.

Q. On that day on your return from the fishing banks in the afternoon, did you see the steamship "Beaver"? A. Yes, sir.

Q. You know the boat, do you? A. Yes, sir.

Q. Had you reached Duxbury Buoy before you saw the "Beaver"? A. No, sir.

Q. How long a time was it before that that you had seen the "Beaver"?

A. About 10 minutes, somewheres around 10 minutes.

Q. Did you see the "Beaver" before you heard her whistle? A. No, sir.

Q. You heard the whistle first?

A. I heard the whistle first.

Q. What course were you on when you heard the first whistle of the "Beaver"?

A. East by north half ~~east~~ north.

Q. And where did you hear that whistle?

A. Pretty near straight ahead.

Q. What speed were you making when you heard the whistle? A. Between 6 and 7. [1047—923]

Q. That is your full speed, is it? A. Yes, sir.

Q. Did you stop your engines or reduce your speed when you heard that whistle? A. No, sir.

Q. What did you do?

A. I starboarded my wheel and tried to get out of her course a little bit.

(Testimony of A. C. Johnson.)

Q. How soon after that did you see the "Beaver"?

A. Well, it was pretty close on when I seen her, just after I heard her whistle; she loomed right up almost right ahead.

Q. Did you hear her whistle again?

A. Not until after she had passed me.

Q. But you heard it again?

A. I heard it again after she passed me.

Q. And when you heard the second whistle was she still in sight? A. No, sir.

Q. She had passed into the fog?

A. She had passed into the fog again.

Q. How close to you did she pass?

A. Well, she was about 150 feet, I guess, something like that; pretty close to us.

Q. Was she going slow or fast?

A. She was going a pretty good speed. Of course, I could not tell how fast, but she was going pretty speedy.

Q. Did the wake of the "Beaver" have any effect on your boat? A. Yes, sir.

Q. What was the effect?

A. It threw the water in on my deck. We were not very far away from her.

Q. The wake from the "Beaver" threw the water in on your deck?

A. Yes, the wake from that ship threw the water in on my deck.

Q. Could you have communicated with anyone on the "Beaver"? [1048—924]

A. I think I could, yes, sir.

(Testimony of A. C. Johnson.)

Q. That is, you were close enough to it to have done that?

A. Yes, we were close enough to it.

Q. When you had crossed the course of the "Beaver" did you use your whistle? A. Yes, sir.

Q. In what way?

A. I was blowing my regular fog-signal and the minute I seen her I gave him two whistles.

Q. At what point were you then, had you crossed the course?

A. I had crossed his bow all right and was going in the opposite direction. I hauled in on my course again and I gave him two whistles.

Q. Did he answer your whistles? A. No, sir.

Q. The only whistles you heard from the "Beaver" were two whistles?

A. Yes, two whistles, one before I had seen him and another after he had passed me.

Q. When the "Beaver" passed you, Captain, and while she was in sight what was her direction from your ship—the "Blanco"?

A. We were probably parallel.

Q. You were probably parallel? A. Yes, sir.

Q. Was she on your starboard side?

A. She was on my starboard side, yes, sir.

Q. Did the swell interfere with the speed of your boat either going out or coming in on that day?

A. No, sir.

Q. How far was the "Beaver" from you when you did see her that day?

(Testimony of A. C. Johnson.)

A. Well, I should judge probably not more than 500 feet off.

Q. That is when the loom first came up?

A. When the loom first came up; when I was in the loom of her first. [1049—925]

Q. Did you notice the Potato Patch when you passed out that morning? A. Yes, sir.

Q. Was the sea breaking on it? A. No, sir.

Q. Was it breaking when you passed in in the afternoon? A. No, sir.

Q. Did your boat pitch any in that swell, Captain?

A. In the swell I was running through that day?

Q. Yes, on that day. A. No, sir.

Q. Did you notice whether the "Beaver" was pitching any? A. No, sir.

Q. She was not?

A. Not that I noticed.

Q. If you had been in the path of the "Beaver" at the time she loomed in sight, could she have avoided you? A. If I had been in her way?

Q. Yes, in her way.

A. Well, I would not care to have stayed there; I was a little bit too close as it was to be comfortable at that time.

Q. Before you had blown your two whistles, as your steering signal, had you blown any other whistle? A. Yes, sir.

Q. What whistle?

A. Blowing the fog whistle all the time steady.

Q. All the time?

A. Yes, and pretty lively too.

(Testimony of A. C. Johnson.)

Cross-examination.

Mr. DENMAN.—Q. Captain, what nationality are you? A. Dane.

Q. You say on this day you had gone out fishing and there was a short low easy swell?

A. Yes, sir.

Q. And that you only heard two whistles from the “Beaver” before you saw her? A. Only one.
[1050—926]

Q. One whistle before and one whistle after you passed? A. Yes, sir.

Q. You are sure of that, are you? A. Yes, sir.

Q. You swear to that, do you? A. Yes, sir.

Q. Your ears are good ears?

A. Reasonable good.

Q. Suppose you should learn that the “Beaver’s” whistle was blowing automatically every minute, how would you account for not hearing it?

A. I don’t know.

Q. Whistles are sometimes very deceptive in the fog, are they not?

A. I think when you are out clear of the land you ought to hear it.

Q. And you are willing to swear you only heard two whistles, one before and one after?

A. I only heard two whistles.

Q. Do you know what an automatic whistle is?

A. Well, I have never seen one.

Q. You know what they are, don’t you?

A. Yes.

Q. What is an automatic whistle?

(Testimony of A. C. Johnson.)

A. Well, it goes by machinery, the same as a clock, doesn't it?

Q. Yes.

A. Of course, when you are out to sea that way and in a position of that kind a minute probably seems a long time, but that is all the whistles I heard from him.

Q. How was the whistle you heard—was it loud or soft?

A. Well, pretty loud. She has a pretty loud whistle.

Q. She has a pretty loud whistle, has she not?

A. Yes, sir.

Q. How far do you think you could hear that whistle?

A. Well, that I could not say. Those small boats of ours burn oil and they make a good deal of noise when they are running but you can hear the whistles a pretty good distance. [1051—927]

Q. Do you mean to say that your boats are so unsafe from the oil-burning that you cannot hear more than one whistle of the "Beaver" before she is on you?

Mr. McCLANAHAN.—I object to the question because the witness has not stated the boat was unsafe because of oil burning.

A. Well, I can easily answer that; it is not mine alone, but every oil-burner is in the same condition when they are burning oil and the oil-burners are running, they are making such a roar that it is not as easy to hear as when you burn coal.

(Testimony of A. C. Johnson.)

Mr. DENMAN.—Q. Don't you know that you heard the whistles of steamers 5 and 6 and 7 whistles before you come on to the steamer? A. Yes.

Q. Even when these boats are making all the noise that you can make? A. Yes.

Q. So there must have been something unusual that day if the "Beaver's" whistle was blowing and you did not hear it.

A. Well, I didn't hear it.

Q. What sort of a whistle have you got?

A. A regular ordinary steam-whistle.

Q. Do you know what the make of it is?

A. No, sir, I do not.

Q. Do you know the size of it?

A. No, I do not know that either, but it is a pretty fair whistle.

Q. It is not as loud as the "Beaver's," is it?

A. Oh, no.

Q. How long did it take you to run from Red Buoy to Duxbury Reef on that day—did you time it?

A. I did, but I have not got it down with me. If I am not mistaken it was an hour and 20 minutes.
[1052—928]

Q. An hour and 20 minutes? A. Yes.

Q. You have talked this over with Mr. McClanahan, have you not? A. I have, yes, sir.

Q. When did you first talk it over with him?

A. Well, I don't remember what day it was.

Q. A month ago?

A. No, I don't think it is as long as that.

(Testimony of A. C. Johnson.)

Q. You don't think it is as long as that?

A. No.

Q. Two weeks ago?

A. Yes, I think something like that.

Q. How did you come to go to Mr. McClanahan?

A. Well, the captain brought me up.

Q. Had you talked to the captain before that?

A. I had.

Q. How long before that had you talked to the captain?

A. Well, probably right after the collision.

Q. Right after the collision? A. Yes, sir.

Q. But you had not seen Mr. McClanahan until just before you came up here? A. Yes, sir.

Q. And you talked the matter over with the captain before, did you? A. Yes, sir.

Q. Did you give him a statement in writing?

A. No, sir.

Q. Nothing in writing? A. No, sir.

Q. What vessels did you see as you came in that night?

A. The only vessel I seen was the "Beaver." I heard one more steamer but I did not see her.

Q. Did you see any vessel lying at anchor outside the heads? A. No, sir.

Q. You are sure of that, are you? A. Yes, sir.

Q. Now, you want to swear absolutely and positively that at the 4-fathom bank the Potato Patch was not breaking when you went in? A. Yes, sir.

[1053—929]

Q. You swear to that, do you? A. Yes, sir.

(Testimony of A. C. Johnson.)

Q. You are sure of that, are you? A. Yes, sir.

Q. And the swell was just a low swell?

A. An ordinary long swell, the same as usual in the winter time.

Q. You said it was a low swell?

A. Yes, it was a low swell.

Q. You swear to that, do you? A. Yes, sir.

Mr. McCLANAHAN.—He is swearing to everything, Mr. Denman.

Mr. DENMAN.—I know that, but I want to make it certain in his mind, that is all, thank you.

Redirect Examination.

Mr. McCLANAHAN.—Q. I never saw you but once before this morning, did I?

A. That is all.

Q. And don't you remember it was a week ago last Saturday that you came into my office?

A. No, I do not, Mr. McClanahan, because I don't put those things down. I never thought I would be mixed up in this case, so therefore I have not paid any particular attention to it.

[Testimony of Edward Johnson, for Libelant (in Rebuttal).]

EDWARD JOHNSON, called for the libelants in rebuttal, sworn.

Mr. McCLANAHAN.—Q. What is your name?

A. Edward Johnson.

Q. How old are you? A. 27.

Q. Where do you live?

A. 1346 Twelfth Avenue, Sunset.

(Testimony of Edward Johnson.)

Q. How long have you lived in San Francisco?

A. All my life.

Q. What is your business?

A. I am captain of a fishing steamer.

Q. What papers do you hold?

A. I hold master and pilot for the bay and tributaries, to Collinsville and Antioch, and the Gulf of the Farallones; and mate of towing steamers, coast-wise. [1054—930]

Q. How long have you held those papers?

A. It will be five years on the 24th of October.

Q. What is your present command?

A. The steamer "Pedro Costa."

Q. How long have you been in command of the "Pedro Costa"?

A. We work the two boats alternately; we have two boats, the "Christopher Columbus" and the "Pedro Costa." During the winter we have the "Pedro Costa" and in the summer we have the "Christopher Columbus." We have had the "Pedro Costa" now since last October.

Q. Are you familiar with the coast lying north and west from this port? A. Yes.

Q. Up as far as Pt. Reyes? A. Pt. Reyes.

Q. And along Duxbury Reef? A. Yes, sir.

Q. In making your trip to the northward, do you pass through the North Channel?

A. Mostly always; yes, sir.

Q. How often have you gone out in that direction fishing?

A. Oh, well, we go out, when we are fishing north,

(Testimony of Edward Johnson.)

sometimes three months at a time—every morning except Saturdays.

Q. That is, three months continuously at a time?

A. Yes, sir, continuously.

Q. How long have you been doing that?

A. It was two years the first of last May.

Q. Before that I understand you were on a tug-boat?

A. Yes, the Spreckels tow-boats, most of the time.

Q. Did you have any experience on them that would enable you to judge of the conditions of that coast?

A. Yes, sir, I was master of the tug "Reliance" and the "Alert" and mate of the tug "Relief" and "Fearless." [1055—931]

Q. Do you know the sea conditions along that coast between the North Channel and Pt. Reyes?

A. Yes, sir.

Q. You have learned that through experience, have you? A. Through experience, yes, sir.

Q. Do you know where the Potato Patch is?

A. I do.

Q. That is sometimes called the 4-fathom bank, is it not? A. The 4-fathom bank, yes, sir.

Q. How long does it take the "Pedro Costa" to make the trip under normal conditions from Red Buoy No. 2 to Duxbury Buoy? A. 55 minutes.

Q. That is your usual time, is it?

A. The usual time. Of course, if it is blowing a northwester it takes us longer.

(Testimony of Edward Johnson.)

Q. Captain, can you tell, while you are at sea fishing, from the condition of the sea, whether it is breaking over the Potato Patch, or not?

A. We can, yes, sir.

Q. So that even in a fog if it is breaking over the Potato Patch and you are out at sea, you can tell?

A. We can, yes, sir.

Q. How do you do that?

A. Well, we can tell by the sea that is running.

Q. From your experience at sea?

A. From our experience out there we can generally tell, we most always can tell. We never got caught at it yet.

Q. When does the sea break on the Potato Patch as regards the tides? A. On an ebb tide.

Q. When you are fishing out there north, what is the last point of departure?

A. As a rule Duxbury Reef Buoy.

Q. How far can that whistle be heard under the most favorable conditions?

A. Oh, I should judge a couple of miles. [1056—932]

Q. How close do you pass to that whistle in clear weather? A. Mostly always alongside of it.

Q. And when it is foggy?

A. Well, we generally make it pretty close. If it is blowing a little northwester and a choppy sea, we mostly always hear it. We always pick up Duxbury going out, because that is generally our point of departure when we go to the grounds.

Q. What is the general condition of the sea out

(Testimony of Edward Johnson.)

there with respect to swells?

A. There is always a westerly swell, always a westerly ground swell.

Q. Do you remember the 22d day of November, 1910? A. I do.

Q. What makes you remember that day?

A. On account of this trouble with the "Selja," the sinking of the "Selja," and then on account of the fog. It was a very thick fog.

Q. You remember the collision, do you, between the "Beaver" and the "Selja"?

A. I do, yes, sir.

Q. And you remember that to be the 22d of November, 1910? A. I do.

Q. What time did you leave the port of San Francisco on the 22d of November, 1910?

A. 4 o'clock in the morning.

Q. How long did it take you to reach Duxbury from Red Buoy No. 2?

A. It would take us about 2 hours and 10 minutes.

Q. From Red Buoy No. 2 to Duxbury?

A. 55 minutes from Red Buoy No. 2 to Duxbury.

Q. Do you remember the time it took you on the 22d? A. The same time.

Q. Do you remember that? A. I remember it.

Q. Why do you remember it?

A. I always figure on 55 minutes and always find it that way except on an exceptional northwest [1057—933] wind or an exceptional flood tide.

Q. Do you remember on this day that you made it in 55 minutes?

(Testimony of Edward Johnson.)

A. I would not say it positively but it was pretty close to it.

Q. Was there anything unusual in the sea that morning? A. It was very calm.

Q. It was very calm?

A. Very calm—a thick fog.

Q. Was the sea breaking on the Potato Patch that morning when you went out? A. No, sir.

Q. How close did you come to Duxbury whistle that morning?

A. Well, I was about 200 feet from it, I guess, going out.

Q. Did you see it?

A. I didn't see it. The fireman saw it. We were looking for it. I had run my 55 minutes, but the fireman saw it before I did and called my attention to it and then I shaped my course.

Q. What was your course then from there?

A. West by south.

Q. Did you hear the Duxbury whistle in the morning when you went out? A. No, sir.

Q. What was the condition of the sea at the fishing banks as compared with the sea around Duxbury Reef? A. It was the same all day.

Q. The same all day?

A. It was the same all day.

Q. What kind of a sea would you call that?

A. There was a very light westerly ground swell.

Q. What was the condition of the fog?

A. Very thick. Occasionally it would lift a little bit, once in awhile, but it would not lift for only the

(Testimony of Edward Johnson.)

fractional part of a minute, it would just lift and then drop again very thick.

Q. Did that condition remain all day?

A. Yes, sir. [1058—934]

Q. What time did you return to this port that day? A. What time did I get to the dock?

Q. Yes.

A. I think it was around 5 o'clock, or a little after, if I remember right; I could not say positively.

Q. Do you know which of the fishing boats had preceded you from the fishing ground?

A. Yes, the "Annie" and the "Farragut" and the "Blanco."

Q. Which point in—which boat in point of time were you nearest to? A. The "Blanco."

Q. Were you ahead of the "Blanco" or behind it?

A. I was astern of it.

Q. On the course back to port, did you see the "Blanco" at all? A. No, sir.

Q. What prevented that? A. The thick fog.

Q. On the course back how near did you pass to the Duxbury whistle? A. Run up alongside of it.

Q. Could you hear the whistle?

A. Yes, just faintly. It cleared up a little bit. We were looking for it. It cleared up for a few seconds.

Q. Captain, did that swell on that day in your trip out to the fishing grounds interfere with the speed of your ship?

A. No, we run the same time.

Q. Coming back did it interfere with the speed of

(Testimony of Edward Johnson.)

your ship? A. No, sir.

Q. Did your vessel pitch on either occasion?

A. No, there was no pitch to her at all, except in running over the ground swell. There was no pitch to her.

Q. Was there any wind that day?

A. There was a light westerly air in the afternoon.

Q. And I understand you to say the conditions of the sea and [1059—935] fog remained the same all day?

A. Practically the same, yes, sir.

Q. Before reaching Duxbury whistle that day had you heard any fog-whistles?

A. Going out in the morning?

Q. No, coming in?

A. Just one. Some steamer, which we found out afterwards was the "Beaver"—

Q. Where did you hear this first whistle?

A. On my starboard bow.

Q. What whistles had you been blowing up to that time?

A. I was blowing my whistle all the time, the regular fog signal.

Q. What did you do when you first heard this whistle on your starboard bow? A. I stopped.

Q. You stopped your engines?

A. I stopped my engines.

Q. Did you hear that whistle again?

A. I heard it again when she was on my port bow.

Q. Was she in sight when you heard it first?

(Testimony of Edward Johnson.)

A. No, sir.

Q. Was she in sight when you heard the second one? A. No, sir.

Q. Between the first and the second whistle had you seen the "Beaver"?

A. Well, I can see a steamer in the fog. I could just see a black outline of a steamer in the fog; I could not say just what it was. It was just a fractional part of a minute. I heard her blowing on the port bow; in fact, I started to go ahead when I heard her blow but I knew that she had passed.

Q. You said this was the "Beaver"; how do you know it was the "Beaver"?

A. Because when I came into the dock the captain of the "Blanco" asked me if I saw the "Beaver" and I said, no, I didn't see her but I saw a vessel that came pretty [1060—936] close to me. He said that was the "Beaver" and he said it came close to him because it washed his decks. So I thought it was the "Beaver" too.

Q. Are you familiar with the "Beaver's" whistle?

A. Yes, sir.

Q. Are you familiar with the "Bear's" whistle?

A. Yes, sir.

Q. Are those two whistles nearly alike?

A. Yes, sir.

Q. Is it possible for you to tell from the hearing of the whistle whether the steamer is either the "Beaver" or the "Bear" or some other vessel?

A. Well, I know it was either the "Bear" or the "Beaver" because by the time—we generally look

(Testimony of Edward Johnson.)

at the sailings from the city, the time they leave, and I can generally tell what steamer it is. Those two steamers I can tell by their whistles; of course I could not tell whether it was the "Bear" or the "Beaver," but it was one of the two.

Q. After you stopped your engines, what did you do with your own whistle?

A. I kept it a blowing.

Q. After leaving Duxbury whistle on your return on that day, did you pass through the North Channel? A. I went over the bank.

Q. You went over what bank?

A. Over the 4-fathom bank.

Q. Over the Potato Patch? A. Yes, sir.

Q. Was there any swell breaking when you passed over it? A. No.

Q. What time did you pass over the bank?

A. It was around 4 o'clock. I would not say positively but I guess it was around 4 o'clock.

Q. On what side of you was Red Buoy No. 2 when you passed over the bank? [1061—937]

A. I did not see the Red Ruby.

Q. Well, whether you saw it, or not, if you passed over the bank can you tell what side it was on?

A. Oh, it was on my port side.

Q. Was the fog still thick when you passed over the Potato Patch? A. Yes, sir.

Q. And you are sure the sea was not breaking?

A. I am sure of that.

Q. Would you have passed over the bank if it had been breaking? A. No, sir.

(Testimony of Edward Johnson.)

Q. Had you determined to pass over the bank before you reached it?

A. Well, I was going to try to pick up No. 2 Buoy if I could, but I was not bothering about it. I knew the bank would not be breaking, or that the bar would not be breaking. I picked up Bonita.

Q. How far from you was the "Beaver" as she passed—what is your best judgment?

A. Well, I should judge a couple of hundred feet.

Q. You saw just but a momentary flash?

A. I just barely seen her. She went by so quick I could not distinguish what it was. I knew it was a big ship of some sort; in fact, I knew it was either the "Bear" or the "Beaver."

Q. You knew that from the whistle?

A. I knew that from the whistle.

Cross-examination.

Mr. DENMAN.—Q. As I understand it, the sea on that day was a short low swell that gave you no trouble at all? A. Yes, sir.

Q. And you only heard one whistle of the "Beaver" before you saw her? [1062—938]

A. One whistle, yes.

Q. By the way, do your engines interfere with your hearing whistles on your boats?

A. Well, the oil-burners do sometimes but we shut the burners off that day. If we are waiting, trying to find a whistle, we shut off the burners.

Q. So you think you might have heard the whistle of the "Beaver" before, if you had not had your oil-burners burning—is that it?

(Testimony of Edward Johnson.)

A. Well, I might have.

Q. It is not rather extraordinary that your—by the way, the “Beaver” has one of the loudest whistles on the coast, the “Beaver” and the “Bear”?

A. She has a very distinct whistle.

Q. And I understand that your engines make so much noise that you only heard one whistle?

A. That is all I heard. I heard one whistle on my starboard bow and one whistle on the port bow.

Q. You know she has an automatic whistle. don't you? A. I found that out afterwards.

Q. And that means that she blows every 55 seconds, does it not?

A. I found that out afterwards, yes, sir.

Q. And your testimony is you heard but one whistle of the “Beaver” coming on?

A. Yes, sir.

Q. And one whistle after she passed?

A. Yes, sir.

Q. And then she went out of hearing?

A. Then she went out of hearing.

Q. What would account for you not hearing more whistles of the loudest on the coast?

A. Well, as I say, it might possibly have been the burners. If we hear a whistle we shut the burners off quick, we stop them.

Q. Well, will you tell me how you are going to be able to go through your maneuvers safely if you can only hear one whistle [1063—939] of the loudest whistle on the coast?

(Testimony of Edward Johnson.)

A. Well, I live up to the rules of the road; if I don't know the position of the other vessel I stop and determine where she is.

Q. But how can you safely go through the fog if you can only hear one whistle of the loudest whistle on the coast? Do you mean to say that your engines are in such condition, that they make so much noise, that an approaching vessel will give you warning of but one whistle before she is on you?

A. Well, the conditions are that way. The whistles are very deceiving.

Q. They are deceiving? How is that? Is it on account of the fog?

A. The weather conditions. Sometimes you can be right up on Pt. Bonita and you can't hear it, and then again you can hear it a mile out at sea.

Q. Would you say that fog conditions would affect it so much that you could have heard three or four whistles if there was no fog and only one whistle if there was a fog? A. I heard two whistles.

Q. Would you say the fog had anything to do with it? A. I don't know.

Q. Have you ever had any experience that the fog affected your hearing of whistles?

A. That I could not say.

Q. Well, you ought to know whether the fog might affect your hearing of whistles blown during a fog.

A. Well, I know this about Bonita, you can run right close up by the beach there and then you can't hear it and then again you can be out by the Lightship and you can hear it.

(Testimony of Edward Johnson.)

Q. How far is the Light-ship from Bonita?

A. About 6 or 7 or maybe about $7\frac{1}{2}$ miles.

[1064—940]

Q. And can you hear Pt. Bonita out that far?

A. At times I have heard it.

Q. But that is exceptional, is it not?

A. Yes, sir.

Q. Don't you know that the "Kansas City," the "Harvard" and the "Yale" all have the same whistles as the "Beaver" and the "Bear"?

A. I didn't know it.

Q. How did you know that the "Beaver" and the "Bear" were the only vessels having that whistle?

A. I say I know the two of them because we passed them two or three times a week and we are blowing to them. We know nearly all of the regular passenger steamers that are running on the coast. We can tell very nearly all of them by the whistles—the big passenger ships.

Q. Do you know that the "Kansas City" was running on that route at that time?

A. I didn't know it.

Q. And it had been running there for a year at that time, as a passenger ship?

A. I didn't know it.

Q. Are you sure you covered the 4-fathom bank on that day? A. Yes, sir.

Q. You are sure of it? A. Yes, sir.

Q. You could not mix that day up with any other day? A. No, sir.

Q. And you are willing to swear to that?

(Testimony of Edward Johnson.)

A. I am willing to swear to that.

(A recess was here taken until 2 P. M.) [1065—
941]

AFTERNOON SESSION.

[Testimony of Olaf Lie, for Libelants (Recalled in
Rebuttal).]

OLAF LIE, recalled for libelants in rebuttal:

Mr. McCLANAHAN.—Q. Captain Lie, on the re-direct examination of Captain Bulger by Mr. Denman there was read from the proceedings before the inspectors certain matter which appears at pages 707–708 of the present record and at the close of this extract which was read, or a closing part of it, there appeared the following:

“Inspector BOLLES.—Q. How long does it take the ‘Selja’ to stop when the engines are stopped from full speed?

A. I could not say anything about it at all.”

From the context it would appear that that question was put to you and that the answer was yours. Is that true? A. No, sir.

Q. Whose answer is that?

A. The third officer’s answer.

Q. And the question was put to the third officer?

A. Yes, sir.

Q. And the transcript of the proceedings before the inspector shows that, does it not?

A. Yes, sir.

Mr. DENMAN.—Does not the record show I was reading a question?

(Testimony of Olaf Lie.)

Mr. McCLANAHAN.—No, it looks as though it might have been Captain Lie's.

Mr. DENMAN.—No, I did not contend that.

Mr. McCLANAHAN.—You omitted this:

“Inspector BULGER.—(To the witness.)”
Bjorn was the witness. You did not put that in.

Mr. DENMAN.—Oh, yes, I see.

Mr. McCLANAHAN.—Q. When Captain Bulger was under examination here, it appears that he was asked this question with [1066—942] reference to the conversation he had with you at his office in San Francisco, to which he testified:

“Q. How did you know he was Captain Lie?

A. I asked him. I think he had a pair of white shoes on when he came in there, if I recollect it.”

Did you have a pair of white shoes on?

A. No, sir.

Q. You had a pair of white shoes on on the “Beaver,” after the collision, did you not?

A. Yes, sir.

Q. Where did you get them?

A. I got them from one of the passengers. I think he was a waiter. He said to me that he was on a vacation and that he was going up north. He is the man who gave me the white shoes.

Q. And when did you discard those white shoes?

A. The night I came ashore.

Q. That is, the night of the 22d? A. Yes, sir.

Q. And you never have had them on since?

A. No, sir.

(Testimony of Olaf Lie.)

Q. So you did not have the white shoes on at the time you had your talk with Captain Bulger?

A. No, sir.

Q. I want to ask you whether this statement of Captain Bulger's is correct, found at page 681 of the evidence: "I spoke to the captain"—referring to you; "I cannot tell you the exact words, but when we got to a point where the captain told me that he had been stopped for 10 minutes, I asked the captain if he was blowing his whistle; he said yes, he was blowing a fog-whistle. At that point I said to the captain, 'We don't wish to take any advantage of you, Captain; I think it would be advisable for you to have your attorney here to represent you.' " What have you got to say to that statement?

A. I did not give any such statement. It is not correct. [1067—943]

Q. Do you remember the conversation that you did have with Captain Bulger on that day?

A. Well, I remember a little of it. I did not have any conversation hardly with him except when he met me in the hallway, he asked me if I wanted to raise any charges against Captain Kidston and I said I didn't know. And Captain Kidston was there at the same time, and he interrupted and said, "Don't speak that way, Mr. Bulger," he said. And I will telephone to my attorney about it—

Q. (Intg.) "And I will telephone to my attorney about it"—those were your words? A. Yes, sir.

Q. Did you telephone to your attorney about it?

A. Yes, sir.

(Testimony of Olaf Lie.)

Q. Who was your attorney at that time?

A. You, Mr. McClanahan.

Q. You telephoned to me? A. Yes, sir.

Q. And asked what?

A. If I was there to raise any charges against Captain Kidston.

Q. And what did I say?

A. You said, "No, you are there through courtesy"—you said that to me.

Q. Did you tell Captain Bulger you had been stopped for 10 minutes? A. No, sir.

Q. Or that you had been blowing your fog-whistle?

A. I don't think I told him anything about it.

Q. Have you told all that you remember of the conversation?

A. Well, the hearing was set before the Norwegian Consul in the afternoon, and I was called up by Mr. Blair, I think his name is, of the Pacific Mail, to take my officers up to the inspectors, because the hearing was going on in the forenoon of that day, but Bulger said it would not be before the afternoon. So I took my witnesses away. That is all. I didn't say nothing. [1068—944]

Q. Have you ever seen Captain Bulger before?

A. No, sir.

Q. Had you ever had any conversation with him before that? A. No, sir.

Q. Did you have one after that and before the hearing? A. No, sir.

Q. I hand you Respondent's Exhibit "B," which is Mr. Frey's memorandum of a conversation be-

(Testimony of Olaf Lie.)

tween yourself and Mr. Frey, held on November 23, 1910. Will you please read that over to yourself, Captain, and tell me if there is anything in that that you wish to contradict—yes, or no.

A. Yes, I wish to contradict some of it.

Q. Will you now read that portion of the statement that you wish to contradict—just that portion, and nothing more.

A. “And that about 5 minutes after hearing the ‘Beaver’s’ whistle the engines were stopped altogether and the ship went ahead under her own momentum.”

Q. Did you say that to Mr. Frey in that conversation? A. No, sir.

Q. What else do you wish to contradict, if anything?

A. Well, there is one thing before that that I just omitted, and that is the 50 revolutions. I did not state any revolutions. It says here: “At the time was going ahead under about 50 revolutions.”

Q. And you did not make any statement as to revolutions? A. No, sir.

Q. Now, tell me if there is anything else.

A. “And he states that there was a very heavy swell.” I did not state that there was a very heavy swell. “And one of these swells picked up the ‘Selja’ immediately prior to the collision, and threw her broadside in the direction of the ‘Beaver,’ then [1069—945] passed on and picked up the ‘Beaver’ and both the ‘Selja’ and the ‘Beaver’ were forced into the trough of the sea toward each other.”

(Testimony of Olaf Lie.)

Q. Do you wish to contradict that statement?

A. Yes. "It is Captain Lie's belief that the impact was materially accelerated because of this."

Q. Do you wish to contradict that? A. Yes, sir.

Q. Is there anything else in the statement you wish to contradict?

A. No, I don't think there is anything else.

Q. Captain, is there anything in that conversation with Mr. Frey with reference to the cause of the collision, how it happened?

A. Well, this cause about the swell there was suggested by Mr. Frey. He was talking about if the swell took the 'Selja' up and threw her against the 'Beaver.' That was suggested, but I did not say anything positively about that at all. I did not say anything about it.

Q. The suggestion came from Mr. Frey?

A. Yes, sir.

Q. And he evidently thought it was acquiesced in by you?

A. Yes, I expect so; it is put in here that way.

Q. Do you wish to affirm all the balance of the statement?

A. Well, I would not say to affirm it or to deny it. I might have said some of it. I would not positively say that I did say it or I did not say it.

Q. But that which you have put into the record you deny having said? A. Positively.

Q. The second officer of the "Beaver" testified that before the collision the "Selja's" bow was pointed about up into the westerly swell; what have

(Testimony of Olaf Lie.)

you got to say to that statement?

Mr. DENMAN.—I object to that upon the ground that it is [1070—946] distinctly leading and not a proper method of examination. If you will ask him what he saw at that time, and what happened at that time, and direct his attention to the time, there will be no objection.

Mr. McCLANAHAN.—You have your objection entered. I do not propose to change my question. You *need suggest* the form of the questions to me.

Mr. DENMAN.—But I want it to appear in the record right here that I have made the suggestion to you.

Mr. McCLANAHAN.—You may answer the question, Captain.

A. No, sir, she did not head into the swell.

Mr. McCLANAHAN.—Q. Before the collision?

A. No, sir.

Q. The second officer also testified with reference to a conversation held between Captain Kidston and yourself on the bridge of the “Beaver” after the collision, and in his statement of that conversation he says as follows, with reference to your statement in regard to the “Selja.” He says that you said to Captain Kidston the “Selja” was at a standstill rolling in the trough of the sea for over 10 minutes before the collision. Did you or did you not make any such statement to Captain Kidston?

A. I did not.

Q. Now, with reference to the same conversation, the third officer of the “Beaver,” a Mr. Judson,

(Testimony of Olaf Lie.)

says that your words to Captain Kidston on that occasion on that subject were the following: "The 'Selja' was lying dead in the water, rolling in the trough of the sea for over 10 minutes." Did you or did you not make any such statement to Captain Kidston? A. I did not make it.

Q. This officer also says that you told Captain Kidston that you had been taking soundings and got 32 fathoms. Did you or [1071—947] did you not make any such statement to Captain Kidston at that time?

A. I might have said soundings; I might have said that I had taken soundings, but I never said that we got 32 fathoms.

Q. Captain Kidston in his testimony, at pages 571 and 572 of the record, with reference to this same conversation has this to say:

"That is the remark he made to me, that he knew it was either the 'Beaver' or the 'Bear' by the sound of the whistle, and that he had been lying at a standstill for over 10 minutes in the trough of the sea and that he had taken a sounding."

What have you got to say to that statement?

A. I might have said that I thought it was the "Beaver" or the "Bear," but I never said that she was at a standstill at any time; and I also may have said that we were taking soundings.

Q. Captain Kidston's version is that you were lying at a standstill for over 10 minutes in the trough of the sea; did you or did you not say that?

(Testimony of Olaf Lie.)

A. No, sir, I did not say that.

Q. Captain Kidston also with reference to that same conversation said that you told him on the bridge that you had been up from 2 o'clock in the morning, that you had made the land and got your soundings at 2 o'clock in the morning; did you or did you not make any such statement to Captain Kidston?

A. No, sir, I never made that statement.

Q. What time did you get up that morning, Captain Lie?

A. One o'clock; a minute or so before one, I should say.

Q. What time did you take your first sounding?

A. 5:30 A. M.

Q. What time did you make the land that morning? [1072—948]

A. The first time I heard the whistle was 2:30 P. M., the whistle off Pt. Reyes.

Q. Did you at any time, either on the bridge or anywhere else, ever make the statement that your vessel had been at a standstill for 10 minutes before the collision?

A. No, sir, I never made that statement.

Q. Did you or did you not ever make a statement that you had been at a standstill at all before the collision? A. No, sir.

Q. Captain Lie, when your vessel has ceased her movement through the water, how do you designate that situation?

A. I say she is done, or she has no way upon her,

(Testimony of Olaf Lie.)

or she is stopped, her headway stopped.

Q. Would you say she was at rest?

A. Well, I might say she was at rest.

Q. Prior to this collision had you ever used that word, "standstill," with reference to the vessel's being done or stopped in the water?

Mr. DENMAN.—Please do not lead the witness. It is obvious what his answer is going to be but we would rather have the record the other way.

Mr. McCLANAHAN.—Answer the question, Captain.

A. No, sir, never.

Q. When did you first hear of the use of this word "standstill" to represent that condition of the vessel?

A. After I saw the translating of my log for the Norwegian Consul.

Q. Who translated that log?

A. The Secretary of the Norwegian Consul, Mr. Bjolstad. [1073—949]

Q. Did you have anything to do with it?

A. No, sir, nothing; absolutely nothing.

Q. When you first read that translation, did that appear to you as something unusual?

A. I never heard tell of it, but I never thought of altering it at all. I did not say anything about it.

Q. Why not?

A. Because it did not look serious to me, I did not think much of it.

Q. Does it not mean the same thing as "stop" or "dead in the water"?

(Testimony of Olaf Lie.)

A. Well, practically the same thing, yes.

Q. Captain Kidston in his examination, at page 653 of the record, in speaking of how the collision occurred, says:

“We seemed to have raised on the swell and as we came down on the swell again that was the time of the collision, and in coming down she chopped right into the side of the ship.”

Bearing that testimony in mind, Captain, I ask you where you were looking after first sighting the “Beaver.”

A. My eyes were entirely put upon the “Beaver” at that moment.

Q. Until what time?

A. Well, until the time of the impact.

Q. Until the time of the collision?

A. Yes, sir.

Q. What have you to say to the statement I have just read to you as the statement made by Captain Kidston?

A. My statement is that she hit and cut right into her. She did not pitch at all when she hit.

Q. Captain Kidston has said in his statement in this case, at page 562 of the record, that at the time the “Beaver” struck the “Selja” she, the “Selja” was heading up toward the swell; what have you got to say to that statement? [1074—950]

A. No, sir, she was not heading up to the swell.

Q. Immediately after the collision, Captain, what did you do?

A. Well, I ordered the engines—first, I ordered

(Testimony of Olaf Lie.)

the boats out; I ran off to the port side and told the Third Officer to come down and get the boat out, the port gig, and then I ordered everybody to their stations, and just as I did that I stopped the engines and told the engineer to come up. I did that through the speaking tube. After that was done and the port gig was over the side I ran down and got hold of all the ship's papers, got hold of everything and threw them into the starboard boat, which was then ready to be lowered, and then I ran over again to the other side to see if their boat was ready and then back again to the starboard side and commenced to lower that boat.

Q. When you say "their boat" what boat do you mean?

A. The ship's boat, the boat on the port side. And before I went down from the bridge I shouted over to Captain Kidston to give us a hand, because I saw she would sink rapidly; I said that he must help us or we would not be saved. Just then he rung his bell for his boats, to commence to get them out. Then I went to the starboard boat and commenced to lower it; we lowered it halfway down and as the ship listed so heavily over it we landed right on the side and the swell being right on the beam it washed the boat upwards and hit her against the plates of the ship and smashed her that way.

Q. If the "Selja" had been headed up toward or into the swell would the starboard lifeboat have been smashed?

A. I don't think so. I am nearly positive that would not be so.

(Testimony of Olaf Lie.)

Q. Where did you see the swell at the time she struck the starboard boat? [1075—951]

A. It was broadside on to the “Selja”; starboard side, broadside on.

Q. You spoke of hearing a bell on the “Beaver” after you shouted to Captain Kidston for assistance. What bell was that?

A. That is the ordinary ship’s bell. You know they ring a bell to show—I expect that is the rule there, it is generally the rule on all ships, that everybody goes to their stations on the boat.

Q. It is the bell directing the crew to their stations?

A. Yes, that is what I understand.

Q. Captain, I understand you had been on the “Selja” from the time of her construction until the collision? A. Yes, sir.

Q. Constantly? A. Yes, constant.

Q. Was the “Selja” ever maneuvered so as to find out within what time she would stop after her engines were stopped? A. No, sir, never.

Q. Do you think it would have been possible for the chief engineer to have maneuvered the “Selja” without your knowing it, in order to ascertain in how long a time the “Selja” would stop after her engines were stopped? A. Absolutely not.

Q. How long does the fog whistle blow at Pt. Bonita?

A. Five seconds; that is all that my book showed.

Q. Your book shows that? A. Yes.

Q. What is the book you refer to?

A. The lighthouse book of the world, and also the

(Testimony of Olaf Lie.)

Pacific Coast book, issued by the United States Government, I think.

Mr. DENMAN.—Q. Have you got that here now, Captain? [1076—952]

Mr. McCLANAHAN.—We have them in our office.

Q. Captain, where were you most of the time on the return trip of the “Beaver” to San Francisco?

A. In the cabin-room—in the dining-room I should say; I think it is the dining-room, yes, it is the dining-room.

Q. In the dining-room of the “Beaver”?

A. Yes, sir.

Q. Where is that situated with reference to the amidships, forward or abaft?

A. Just abaft of the engine-room.

Q. And is that abaft of amidships?

A. Yes, sir.

Q. From your position could you have told whether the “Beaver” in making the trip back to San Francisco did any pitching, or not? A. I think so.

Q. Did she pitch?

A. Not to me, no, sir; I did not feel her pitching.

Mr. McCLANAHAN.—There is one question, Mr. Denman, which is not strictly rebuttal but which has reference to the matter I put Captain Lie on for the other day, the matter of the proof of loss.

Q. What kind of a new winch was this that was shipped to Hongkong and installed on the “Selja”?

A. It is an ordinary winch, just the same as the other winches on board of the “Selja.” The dimensions were 8 by 10 or 9 by 10, I don’t know which.

(Testimony of Olaf Lie.)

Q. It was the common ordinary ship's winch, for such a ship of the "Selja's" type? A. Yes, sir.

Q. Captain, how long was it after the collision before you boarded the "Beaver"?

A. Oh, it was about 35 minutes.

Q. Will you take up your story from the time the "Selja's" starboard boat was smashed on the side and tell what you did from that time up to the time you got on the "Beaver." [1077—953]

A. When the boat was smashed alongside I got hold of the after tackle of the boat and entered on board the "Selja" again. I saw that the forward deck was then awash; there was only a little bit of the forecastle standing out, I ran over to the port side and jumped overboard and swam over to one of the "Beaver's" boats and they picked me up. After I got into that boat I saw the second officer standing on the bridge of the "Selja" and I told him to jump overboard; but it seemed to me that he was so exhausted that he did not dare to do so, so we pulled back again—the "Beaver's" boat—pulled right up to the "Selja's" side and got hold of him, and as soon as we got away from the "Selja" she sank, she turned turtle and sank; and after she turned turtle and sank I knew there was somebody over on the other side, and we went across to the other side and picked them up—picked up some of the Chinese. I think there were two boats over there. Then after that was done we looked around a bit and then came back to the "Beaver," pulled back to the "Beaver."

Q. And then went on board? A. Yes, sir.

(Testimony of Olaf Lie.)

Q. On what side of the "Beaver" did you go on board? A. On the starboard side.

Q. That would be the weather side?

A. The weather side.

Q. From the time of the collision to the time you were on board the "Beaver," as you have stated, was Pt. Reyes or any land visible?

A. No land was visible when I was in the boat.

Q. Did you see Pt. Reyes or any land after you got on board the "Beaver"?

A. I did not see it before Captain Kidston pointed it out to me.

Q. When was that?

A. That was just when I came on board.

Q. What did you go on board for at that time, Captain? [1078—954]

A. While I was changing my clothes and talking to them down there I asked where she was bound to—

Q. (Intg.) Just let me interrupt you, please. You say after you changed your clothes—when you came on the "Beaver" did you change your clothes?

A. Yes, oh, yes.

Q. Where did you go?

A. I went into the chief Steward's room—I think it was the chief Steward's room, and I changed my clothes there, sitting there a long time.

Q. Where did you get the clothes you changed into?

A. This man I mentioned before, a waiter or whoever he was, he was a passenger,—he was not on duty at that time, he told me he was going up to Portland on a vacation. He brought me a few pieces of clothes

(Testimony of Olaf Lie.)

now and then. It seemed to me he got them from somebody else.

Q. Just tell me what he brought you .

A. He brought me a pair of white shoes.

Q. Did he bring everything all at one time?

A. No, sir; first he brought me the shoes. He brought me a pair of underdrawers and a shirt and a pair of overalls.

Q. Not all together? A. No.

Q. One at a time? A. Yes.

Q. And you put those on in that room, did you?

A. Yes, sir.

Q. Then what did you do?

A. I asked somebody where the "Beaver" was going, but they said they didn't know.

Q. Pardon me, Captain: did you see your wife and children up to that time? A. Yes, sir.

Q. Where were they? A. In the same room.

Q. How long were you in that room?

A. I must have been in that room about 20 minutes.

Q. Now, you say that somebody, while you were in that room made some statement? [1079—955]

A. Yes. I asked the chief Steward, after I got my clothes on, if he knew where she was heading, where she was going to, and he said he did not know, and so I said, "I am going to find out; I am going to go on the bridge and ask the captain if he is going to Portland or to San Francisco"; and I went up and asked him about that, and he said—

Q. (Intg.) Wait a minute; don't go so fast. What side of the bridge did you go up on?

(Testimony of Olaf Lie.)

A. On the starboard side.

Q. Was the "Beaver" at that time under way?

A. Yes, sir.

Q. Can you give us any idea what time this was, Captain?

A. Oh, I should say somewhere about 10 minutes after 4, I should say it was, I did not look at a clock but I should judge it was about 10 minutes after 4.

Q. Where did you land when you got on the bridge—what part of the bridge?

A. Just at the top of the ladder.

Q. And is that the place where you had the conversation with Captain Kidston?

A. Yes. I never moved from there.

Q. You did not move from there?

A. No, sir, except I just moved a few feet when the wireless operator came up and I was introduced to him.

Q. Other than that you did not move from your position? A. No, sir.

Q. Was Captain Kidston there when you came up?

A. No. He came toward me. He was standing somewhere about amidships of the vessel and he came toward me when I came up.

Q. Did he come alone? A. Yes, sir.

Q. Who else did you see on the bridge besides Captain Kidston?

A. I saw two men. I thought one of them was the quartermaster, standing amidships, somewhere around the compass. [1080—956]

Q. How far is that from where you stood?

(Testimony of Olaf Lie.)

A. Oh, I don't know; it must have been somewhere about 10 feet, somewhere around there, although I could not say for certain.

Q. Did that man whom you saw standing amidships come toward you while you were conversing with Captain Kidston? A. No, sir.

Q. What other man did you see there?

A. I saw some man standing by the telegraph, looking forward.

Q. Would that be on either side of amidships, and if so, on which side?

A. It was a little around amidships, perhaps over to the starboard, I would not say for certain.

Q. How far was that from you?

A. About the same distance.

Q. Did that man come toward you during the conversation? A. No, sir.

Q. Now, Captain, give us your version of that conversation as you remember it.

A. Well, I asked Captain Kidston if he was going back to San Francisco and he said so, and he said he was very sorry that he put me out of a command. And then I asked him—I don't really remember if I asked him, but he said to me then that they know it in San Francisco now that the "Selja" is doomed, because the wireless operator came up at that time, he came and asked for some more orders, and I interfered a bit, and he said, "Oh, the 'Selja'; they know that in San Francisco now that she is doomed." He told me that he wanted to give me some better clothes to put on and he took me down to his room,

(Testimony of Olaf Lie.)

and I finally got some clothes from him. He gave me a suit of clothes. I think also he put a pair of shoes over to me and also a box of cigars. I remember that. Then he left again and went on the bridge. [1081—957]

Q. You say he put a pair of shoes to you; I thought you said a little while ago you had shoes?

A. Yes, but I didn't take his shoes; I did not change shoes.

Q. What did you mean when you said he put a pair of shoes to you?

A. He took a pair of shoes out of his wardrobe and put them toward where I was standing and he said, "Help yourself." His clothes were rather big for me, compared with the stoutness, and his shoes were rather small; I didn't change the shoes at all.

Q. And that, Captain, as I understand it, is all you remember of that conversation?

A. That is all I remember, yes, sir.

Q. Didn't he say something about Pt. Reyes at that time?

A. Oh, yes, I forgot that; he pointed to Pt. Reyes, and he said, "There is Pt. Reyes." It was about right off.

Q. He says that you made some remark about taking soundings; you don't remember that?

A. I don't recollect it. I may have said so.

Q. He also says that you said that you heard the whistle for 15 minutes and knew it was either the "Beaver" or the "Bear"; don't you remember saying that?

(Testimony of Olaf Lie.)

A. I don't remember saying so, no, sir, but I may have said that I thought it was either the "Beaver" or the "Bear" because the whistle itself indicated it was a large steamer, and I knew these vessels were going up to Portland, Oregon. I might have said so.

Q. Captain, did that swell of that day affect the speed of the "Selja"? A. No, sir.

Q. How did it affect her before on that day—during the night?

A. It did not affect her. She was running—we have had that swell, perhaps a little bigger, for at least 24 hours [1082—958] previous, but we were running our regular rate, $10\frac{1}{4}$ or something like that, right along.

Q. $10\frac{1}{4}$ knots? A. Yes, sir.

Q. You have heard the statement made here by several witnesses produced for the "Beaver" to the effect that at the time the "Selja" was first seen she was lying in the trough of the sea; what have you got to say as to that statement?

A. No, she was not lying in the trough of the sea when I first sighted the "Beaver."

Q. Captain Lie, is it possible you said anything about the stopping of your vessel in that conversation on the bridge?

A. Yes, it is possible. I might have said that I stopped my engines 10 minutes after 3. I might have said something like that, but I don't recollect it.

Cross-examination.

Mr. DENMAN.—Q. Captain, you say you had that sea for some 24 hours prior to that time?

(Testimony of Olaf Lie.)

A. I could not say exactly the number of hours, but we had had it.

Q. Well, anyway, for 12 hours? A. Yes, sir.

Q. And you knew it would not affect the speed of your vessel because you had been running $10\frac{1}{4}$ knots?

A. I said that was our ordinary speed.

Q. How could you tell what you run when you had been varying your speed during the previous 12 hours, from $10\frac{1}{4}$ knots to 3 knots—how could you tell what you run?

A. I don't understand your question.

Q. You stated that the reason you knew the swell had not affected your speed was because you had been running at $10\frac{1}{4}$ knots? A. Yes, sir. [1083—959]

Q. How do you know what ground you covered if, as a matter of fact, you had been running at various speeds during the preceding 12 hours, for various periods of time? How could you tell whether it affected your speed or not, during that period? Have you ever added up all the number of knots for the number of hours that you ran?

A. I don't mean that we slowed down the engines, I mean to say when we were running full speed, we were running that.

Q. You ran into the fog before on that night, did you not—at 12 o'clock? A. Yes, sir.

Q. You did not run full speed in the fog, did you?

A. We ran full speed up to 5:30.

Q. Then you were running full speed in the fog?

A. Yes.

(Testimony of Olaf Lie.)

Q. How could you tell from that time of the night whether or not the swell had added to your speed or had not added to it? How could you tell for a 5-hour run at night? You were in the fog, were you not?

A. I knew it by the log.

Q. But the log is carried forward by the swell, is it not, as well as the ship?

A. We looked at the log every four hours, and up to 4 o'clock I knew she was making the same speed as usual. After that I could not say exactly.

Q. By the way, when you came in did you notice whether the sea was breaking on the 4-fathom bank?

A. No, sir; I was not on deck; I was in the cabin.

Q. Didn't you notice whether it broke there, or not?

A. No, sir; I did not pay any attention to it.

Q. Don't you recollect saying anything about that?

A. No, sir.

Q. What is this book that you are speaking of?

A. A lighthouse book issued by the American Government; lighthouses of the Pacific Coast. It also has the lighthouses [1084—960] of Japan, China and all those places—both in English and American.

Q. How did that book describe the signal at Pt. Reyes?

A. I think it said it was a first-class siren, 5 seconds blast and 35 seconds interval.

Q. Have you got the book?

A. No, I have not got the book here.

Mr. McCLANAHAN.—Q. Is not that the book that is in my office, Captain?

(Testimony of Olaf Lie.)

A. That is not the same book as I have; that is more for sailing directions.

Mr. DENMAN.—Q. It is in the other book, is it?

A. Yes, sir.

Q. Which book did you consult? Can you get the other book right now and bring it in to me?

Mr. McCLANAHAN.—Is it the Coast Pilot-book?

Mr. DENMAN.—Q. Which one is it you consulted at that time?

A. I did not consult that book at that time, but I presume it is the same thing.

Q. What did you say that book described the signal to be? A. A first-class siren—

Mr. McCLANAHAN.—Are you speaking of Pt. Reyes?

Mr. DENMAN.—Yes, Pt. Reyes.

A. Oh, Pt. Reyes—I beg your pardon. I thought you were speaking of Pt. Bonita.

Q. No, Pt. Reyes.

A. The book I had said it was a first-class steam-whistle, a 5-second blast, and 70 seconds interval.

Q. As a matter of fact, when you got there there was no steam-whistle there?

A. No. I found that out.

Q. And what was the blast you heard? [1085—961]

Mr. McCLANAHAN.—I object to that as improper cross-examination on rebuttal.

Mr. DENMAN.—You asked him these questions.

Mr. McCLANAHAN.—I beg your pardon.

Mr. DENMAN.—You asked him what whistle he got at 2:30.

(Testimony of Olaf Lie.)

Mr. McCLANAHAN.—No, I beg your pardon.

A. I found it to be 35 seconds interval, and a blast of about 2 or 2½ seconds.

Mr. DENMAN.—Q. A whistle or a siren?

A. A siren.

Q. As I understand it, you changed your course at 2:50? A. Yes, sir.

Q. That was before the First Officer came on the bridge, was it not? A. Yes, sir.

Q. And you changed your course on the 2-whistle bearings from a siren that blew what?

Mr. McCLANAHAN.—I object to the question as improper cross-examination on rebuttal.

A. 35 seconds interval and 2 or 2½ blast, I don't remember which. But I would like to say—

Mr. DENMAN.—Just a moment. What direction did you set your course for?

Mr. McCLANAHAN.—That is objected to as improper cross-examination on rebuttal.

A. I set it toward the light-ship.

Mr. DENMAN.—Q. Captain, you are familiar with these tide-tables, are you not (handing book to witness)?

A. Yes, sir.

Q. Will you give me the amount of full of the tide in feet from the previous low tide to high tide on that day—how [1086—962] much did the tide rise?

A. You mean up to 3:10 in the afternoon?

Q. What is the difference between the previous

(Testimony of Olaf Lie.)

low tide and the high tide, about the time of the collision?

Mr. McCLANAHAN.—At what point?

Mr. DENMAN.—At the San Francisco entrance?

Mr. McCLANAHAN.—At Fort Point?

Mr. DENMAN.—Yes.

A. It was low water at 9:47 A. M., on that day, and the height of water was 3½ feet; it was high water at 3:10 P. M., and the height of the water was 4.8; that makes a difference in the flood tide of 1.3 feet.

Q. That was the rise of the tide? A. Yes, sir.

Q. How many hours did it rise in?

A. That is 5 hours and 23 minutes.

Q. Captain, you recollect the day that Mr. Frey read his statements, do you not, in Mr. Brown's office? A. Yes, sir.

Q. Do you remember going to him immediately afterwards and asking him a certain question before he left the room? A. Yes, sir.

Q. What was that about?

Mr. McCLANAHAN.—I object to that as immaterial.

A. I asked him about the gratuity of the last voyage. I knew the officer got it and I didn't get it. That is the reason I asked him.

Q. Do you recollect the day that Captain Kidston testified out there? A. I was there.

Q. And do you recollect leaving the hall of the courthouse on that day with him and going down in the elevator with him [1087—963] and walking up the street with him to the corner of Market

(Testimony of Olaf Lie.)

and Seventh and then down Market Street away, when Mr. Hengstler and Mr. Page and I were behind? A. I don't recollect that at all.

Q. Do you recollect you did not?

A. He was up there several days. I think I walked with him one day—yes, I think I did.

Q. Do you recollect it was on the day he testified regarding the conversation on the bridge? Do you remember you talked to him about it?

A. No, I do not.

Q. Do you remember you talked to him about the \$1,000 you received and how you exhausted it on account of the high cost of living in San Francisco?

A. Now, I remember what I said: I said to Captain Kidston, that I could not stay here on my own expenses but the insurance company kept me here, the hull underwriters of the "Selja," and that I have already spent as much as I would cover in this case—that is, I mean my personal loss. That is what I said.

Q. And do you remember speaking about the high cost of living here in San Francisco, how much it cost to live here? A. I think I did, yes.

Mr. McCLANAHAN.—That is our case.

(An adjournment was here taken until to-morrow, Tuesday, August 1, 1911, at 4:30 P. M.) [1088—964]

Tuesday, August 1st, 1911.

[**Testimony of George Scott, for Claimant (in Surrebuttal).**]

GEORGE SCOTT, called for claimant "Beaver" in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, what is your full name? A. George Scott.

Q. What is your occupation?

A. At present I am a bar pilot.

Q. What is a bar pilot?

A. A bar pilot is a man who pilots ships in and keeps them out of danger while entering San Francisco harbor.

Q. By whom are you commissioned?

A. By the State of California, by the Governor of the State.

Q. Have you a federal commission also?

A. Yes, sir.

Q. How long have you been a bar pilot here?

A. Since 1893.

Q. What was your business before that?

A. Master of tow-boats.

Q. How long had you been master of tow-boats?

A. Since 1878 up until 1893, until the latter part of 1893.

Q. In and out of the bay of San Francisco before that time? A. Yes, sir, and coastwise.

Q. Coastwise on this coast? A. Yes, sir.

Q. With San Francisco as home port, I suppose?

A. Yes, sir.

Q. Do you recollect the day of November 22, 1910,

(Testimony of George Scott.)

the day of the "Beaver"- "Selja" collision?

A. Yes, sir.

Q. Were you at sea the night before?

A. Yes, sir.

Q. On what?

A. On the pilot boat "Pathfinder."

Q. Do you recollect the condition of the weather on that night?

Mr. McCLANAHAN.—I object to the question as being [1089—965] improper surrebuttal, it appearing from the record that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal. I will add the further objection that the question is immaterial, irrelevant and incompetent.

A. Yes, sir.

Mr. DENMAN.—Q. What was the condition of the weather on that night, Captain?

Mr. McCLANAHAN.—We make the same objection to that.

Mr. DENMAN.—Is it the same objection all the way through to these questions?

Mr. McCLANAHAN.—The same objection all the way through so far. You will agree, will you, that the objection will apply to all this line of examination?

Mr. DENMAN.—I will agree that you have made the objection to all this line of examination, that all this line of examination is objected to.

(Testimony of George Scott.)

A. The wind was light south.

Q. How was the sea?

A. A heavy southwest swell.

Q. Did you anchor that night? A. No, sir.

Q. Why didn't you anchor?

A. Well, we were afraid to anchor or to kedge, as the pilots say, for fear that we would either break our kedge line or our anchor or our windlass, the swell was so heavy that we did not think it was prudent to do so.

Q. Who was on the pilot boat that night?

A. Captain McCulloch and Captain Swanson.

[1090—966]

Q. How long did that rough weather continue?

A. I don't know how long the rough weather continued, but it continued with us until we came in, until we boarded the Japanese steamer, which was between 12 and 1 o'clock that we passed Pt. Bonita.

Q. What Japanese steamer did you board?

A. You've got me there, I couldn't tell you the name of it; it is a Japanese cruiser, the smallest one of the two.

Q. There were two Japanese cruisers coming into port at that time? A. Yes, sir.

Q. And you piloted one?

A. Yes, sir, I piloted one, the smallest one.

Q. Who piloted the other?

A. Captain McCulloch.

Q. Who came in first?

A. The steamer that Captain McCulloch had.

Q. What was the condition of the sea outside

(Testimony of George Scott.)

when you boarded the cruiser?

A. The same condition, a very heavy swell and almost a calm.

Q. Almost a calm?

A. Yes. We had to pull to the vessels in our yawl.

Q. Were you able to come in over the bar itself?

A. No, sir.

Q. How did you come in?

A. We did not think it was prudent to come over the bar, we came in over the North Channel.

Q. What was the condition of the bar as you came in over the North Channel?

A. Well, the bar we could not see, but the condition of the 4-fathom bank, it was breaking the whole length of it.

Q. What marked the length of it?

A. A red buoy on one end and a striped buoy on the other.

Q. You say it was breaking the whole length of the bank [1091—967] between the two buoys?

A. Yes, sir; that is, it was not continuous, but it would start from the outer end and work in; it would have a little interval and then keep going again and work in.

Q. What effect did that have on your vessel as you approached the red buoy?

A. You mean in changing our course?

Q. Did she pitch?

A. No, she rolled mostly, but it made this difference with us, with that heavy sea, going from there

(Testimony of George Scott.)

to the light-ship we had to alter our course a point to the northward, it kept throwing the ship in toward the shallow water.

Q. What condition was it coming through the channel itself? How was the sea as you came through the channel?

A. It was rough. The breakers broke inside of the mid-channel buoy and the North Channel.

Q. What direction did they strike your vessel as you went through?

A. On the starboard side, broadside almost.

Q. Did you ship any water coming in?

A. No, we did not ship any water.

Q. Do you know whether the other vessel did, or not? A. I do not know that.

Q. What time did you get into San Francisco Bay, do you recollect?

A. We anchored about a quarter past one, or 10 minutes past one, something like that. I did not time it but I know it was something in that neighborhood.

Q. Do you recollect seeing the "Beaver" going out?

A. No, I do not recollect seeing the "Beaver" going out.

Q. Captain, you have been a great many years outside the heads, here,—what can you say with regard to the reliability of [1092—968] whistle signals in the fog for determining the direction from which the sound comes?

Mr. McCLANAHAN.—Of course, it is understood

(Testimony of George Scott.)

that my objection applies also to this question.

Mr. DENMAN.—Yes.

A. Well, a whistle in a fog is very deceptive. You might think it was straight ahead or you might think it was to your left or to your right; when you go in the direction you think it is you find it after you have gone a little while somewhere else on the other side. Without you get a good loud whistle and a pretty fair atmosphere,—then you can locate it with some accuracy, but not until you have a good clear atmosphere.

Q. What do you mean by a clear atmosphere? Is there such a thing as a lumpy fog?

A. So that the fog is bunchy, or a tule fog; I mean an ordinary northwest fog.

Mr. DENMAN.—That is all.

Mr. McCLANAHAN.—No cross-examination.

[Testimony of Alexander Swanson, for Claimant (in Surrebuttal).]

ALEXANDER SWANSON, called for the claimant “Beaver” in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, what is your full name? A. Alexander Swanson.

Q. What is your occupation? A. I am a pilot.

Q. How long have you been a pilot?

A. 21 years.

Q. What sort of a pilot are you—what papers do you hold? A. Just a State pilot.

Q. You also hold a Federal pilot license?

A. No.

Q. You have been a State pilot for 21 years on

(Testimony of Alexander Swanson.)

this bar? A. Yes, sir. [1093—969]

Q. Are you the only licensed bar pilot to take in vessels? A. There are twenty bar pilots.

Q. Do you recollect the day of the “Beaver”-“Selja” collision? A. Yes, sir.

Q. Do you recollect the night before that?

A. Yes, sir.

Q. Where were you on the night before that?

A. Out by the light-ship.

Q. Aboard the pilot boat?

A. Aboard the pilot boat.

Q. Can you recollect the condition of the sea the night before?

Mr. McCLANAHAN.—I object to the question as being improper surrebuttal, it appearing by the record that the claimant-respondent’s case is pregnant with the subject matter of the question—to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal; I will add the further objection that the question is immaterial, irrelevant and incompetent.

A. Yes.

Mr. McCLANAHAN.—The understanding will be, Mr. Denman, that my objection applies to all this line of examination, the same as with the other witness.

Mr. DENMAN.—Yes. And this is closing our case with reference to the conditions on the bar and in response to the testimony brought out on rebuttal given by the two fishermen.

Mr. McCLANAHAN.—We devoutly hope that it

(Testimony of Alexander Swanson.)

is closing respondent's case.

Mr. DENMAN.—Q. What was the condition of the weather that night, Captain?

A. The weather was foggy during the [1094—970] night before, it was foggy most of the night, and a very heavy swell; it was an extraordinary swell.

Q. How long did that swell continue?

A. It continued—I came through the North Channel at one o'clock that day, and, of course, I could not tell after that. The condition coming through the North Channel was as heavy a swell as I ever came through there in.

Q. Was that on the 22d?

A. That was on the 22d.

Q. What vessel did you bring through?

A. The "Arizona."

Q. Anything happen to her?

A. Well, she carried away her light screens, that is, the screens on the side. All obstructions that were on the side—the accommodation-ladder was split all to small pieces, and also it filled all the state-rooms and there was a kind of a general upheaval all around.

Q. Where did this occur?

A. Right in the North Channel.

Q. What caused this?

A. There was an extraordinary heavy break on the bar.

Q. What is that portion of the bar called that is just off to the west of the North Channel?

(Testimony of Alexander Swanson.)

A. The Potato Patch.

Q. What was the condition of the Potato Patch as you went by?

A. One steady break, one steady break of white water.

Q. What do you mean by one steady break? Did it mark the limits of the Potato Patch?

A. The Potato Patch is the shallowest spot outside the North Channel. The breakers commence from about four miles out and it comes in a straight row from there to the North Channel. The shallowest spot is on the inside of that.

Q. Do you recollect what time you anchored?

A. I anchored a little after one o'clock. I have not got the time exact. I know the "Maru" just came down from the [1095—971] dock and she leaves at one o'clock. That is how I can place the time, unless I went down and looked at the records I could not place the time exactly. I know it must have been about 15 minutes or so after one o'clock because she just came down by us.

Q. Did you see the "Beaver" going out that day?

A. I met the "Beaver" in between the Heads, I think between Pt. Diablo and Lime Point.

Q. What can you say with reference to the intensity of this swell; was it greater or less than you have at that season of the year?

A. Well, it was a little early in the year to have a real heavy swell but I could not say—I think we have had it before, but it very seldom comes as high as that in the month of November. We have it as a

(Testimony of Alexander Swanson.)

rule in December and January. Then we have the heaviest swell. Although I have seen it in November just as high as that, every bit. Yes, I think I have; I have even seen it in October. It usually comes about twenty years apart, or something like that.

Q. How large a vessel is the "Arizona"?

A. She is 5,000 and over net tonnage; about 12,000 tons capacity; her bridge is about 30 or 35 feet above the water, the way she was loaded at that time.

Q. How high did the water come over you?

A. Well, I thought it was 500 feet. I was with my hands up this way, and it filled up and came up to my shoes on top of the bridge. I was in the middle of the ship.

Q. Would it have been possible to have crossed the 4-fathom bank in a 50-foot fishing boat while the sea was in the condition that you saw it?

A. No, sir. There was no [1096—972] vessel in the world that was ever built that could go over that without damage, without danger of breaking down. There is a possibility that one of these torpedo boats that they build now to go under water, it is possible one of them could go over it, but nothing could go over that without breaking it all to pieces; I am sure of that.

Cross-examination.

Mr. McCLANAHAN.—Q. Is the "Arizona" a Government boat?

A. No, it belonged to the American-Hawaiian Line.

(Testimony of Alexander Swanson.)

Q. What "Maru" was it you saw just coming down when you came in?

A. The "Nippon Maru."

Q. She was going out to sea?

A. She was going out to sea.

Q. Where was it you met the "Beaver"?

A. I think between—I have an idea that it was between Lime Point and Pt. Diablo.

Q. That is this side of the channel, is it not?

A. Yes, it is on the inside of the channel, yes.

Q. You know the steamship "Selja," don't you?

A. Yes; I have been a pilot on her.

Q. And were you not refused pilotage on her two years ago?

A. No. Two years ago I think I was a pilot on her. I am not so very sure about those dates, but I know I have been a pilot on the "Selja."

Q. Do you remember being refused pilotage by Captain Lie? A. I cannot remember that, no.

Q. What is that?

A. No, I cannot remember it, that I was refused.

Q. Are you a member of the Pilots' Association?

A. Yes, sir.

Q. Who is the attorney for the association?

A. Mr. Denman is the attorney for the association.

Q. When did Mr. Denman speak to you about this matter first? [1097—973]

A. This morning.

Q. Had he ever spoken to you about the "Selja"—"Beaver" collision before? A. No.

[**Testimony of J. E. McCulloch, for Claimant (in Surrebuttal).**]

J. E. McCULLOCH, called for the claimant
“Beaver,” in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, what is your occupation? A. San Francisco bar pilot.

Q. How long have you been a bar pilot?

A. 18 years.

Q. You hold a State license? A. Yes, sir.

Q. And a Federal license?

A. A Federal license also.

Q. You recollect the day of the “Beaver”—“Selja” collision?

A. I recollect the “Beaver”—“Selja” collision, yes, sir.

Q. Do you recollect that that was on the 22d of November, 1910?

A. By referring to memory I know it was on the 22d because I came in with the Japanese man-of-war “Asama” on that day and after having arrived at anchorage found out that the “Beaver” had collided with the “Selja.”

Q. How late in the afternoon did you find that out—when did you come ashore?

A. I came ashore about 4 P. M.

Q. Were you out the night before?

A. Yes, sir.

Q. What was the condition of the weather that night?

Mr. McCLANAHAN.—I object to the question as being improper surrebuttal, it appearing by the rec-

(Testimony of J. E. McCulloch.)

ord that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal, I will add the further objection that the question is immaterial, irrelevant and incompetent. [1098—974]

Mr. DENMAN.—It is stipulated that the same objection, as heretofore, will apply to all the questions along this line.

A. I have no particular remembrance of the weather the night before. It was my first aboard and I was asleep most of the time.

Q. What was the weather on the morning of that day?

A. About 9 A. M. it was dead calm, heavy westerly swell, foggy.

Q. How long did that weather continue, to your knowledge?

A. The best way I can tell you how that continued would be by the duties I performed from that time on.

Q. What did you do, Captain?

A. About breakfast time, 9 o'clock, on the pilot boat, two steamers came very close to us and we hailed them with a megaphone, asked them if they wanted a pilot, and they proceeded on to the westward of us at that time, and we by seeing their lower water lines concluded that they were two Japanese men-of-war, which we knew at that time were about due. We could not stop them by using the megaphone, and the weather was such that we could not

(Testimony of J. E. McCulloch.)

sail to them, but we kept on to the westward with our boats following them, and the pilot boat "America"—I think the "America," I won't be sure—but the pilot boat that had come out on that stage of the tide spoke us and told us that there were two Japanese men-of-war who had communicated with the port by wireless asking where they would find pilots. After that we knew that those two vessels which had passed us must be the two Japanese men-of-war. We worked as well as we could under the circumstances of the weather toward the light-ship, and about 10 o'clock we launched a yawl and I in the yawl with two seamen pulled out to the light-ship and found the two ships, both the "Asama" and the "Kasaji," anchored out to the westward of the lighthouse. [1099—975] These things are only memory and—

Q. (Intg.) But you finally got on board, did you?

A. I rode out in a boat and went on board the "Asama" and got on the bridge of her and the admiral of the "Asama" asked me if I would take him to port. I told him I would; I told him also that the bar was in such a condition that it was breaking—

Mr. McCLANAHAN.—I object to this as entirely irrelevant and hearsay.

A. (Continuing.) Hearsay! How hearsay? I am not talking hearsay.

Mr. DENMAN.—Q. Just tell us how it was, Captain. That is an objection for the Court and not for you. What did you say to the admiral?

A. I said to the admiral, that the state of the bar was such that I could not take charge of both of his

(Testimony of J. E. McCulloch.)

ships, that I would require another pilot to have charge of his ship because we would need independent action as the state of the bar demanded it. He said, "Very well, Captain, call for another pilot." I blew the whistle for another pilot, and Captain Scott, who was also attached to the "Pathfinder" at the time, put out from his boat, and we heaved up anchor and picked Captain Scott up on our way in from where they were anchored around the light-ship. After having Captain Scott on board, and knowing that that was all straight, I straightened out my course for the No. 2 buoy, as it is now designated, Red Buoy, on the outside of the bar. As we proceeded on that course the weather cleared a little, and seeing the breaking bar on our starboard side, and the heave of the swell having thrown me inside of my projected course, I hauled [1100—976] my ship out one point by compass to pass outside of the red buoy, and without danger of going on to the bow of the bar between the two buoys. When I entered the North Channel everything there was smooth in the channel, but the west bank was breaking tremendously. It was breaking so that from the inside west bank buoy to North Head was one continuous run of white water, and, gentlemen, I tell you that when those Japanese officers saw that white water ahead of them, and not knowing where I was directing their ship, the ten officers in that turret fixed their eyes on me to see whether I was going to quiver in taking that ship through or no. There was a continuous line of white water from the west bank to the North

(Testimony of J. E. McCulloch.)

Head, without a break at all, and I, knowing that there was sufficient water there, took their ship through.

Q. Did you ship any water?

A. I? No. My ship was 26 feet 6 draught, and she did not ship any water.

Q. What other vessels came in at the same time—do you recollect?

A. The “Kasaji” was following me.

Q. Did you see any other vessels coming in through the North Channel at that time?

A. No, not when I was passing through.

Q. What was the condition of the weather at that time as you came in through the North Channel?

A. What does “weather” mean?

Q. I mean the atmosphere.

A. The atmosphere—foggy, but sufficiently clear to see buoys as we approached them on the courses.

Q. What time did you get into the harbor?

A. I anchored that ship at Meiggs’ Wharf at about 1 o’clock.

Q. Where did you go then?

A. From there to the man-of-war [1101—977] anchorage off Folsom Street—not Folsom Street—yes, Folsom and Harrison.

Q. And from there you went ashore?

A. Yes, sir, I got ashore about 4 o’clock.

Cross-examination.

Mr. McCLANAHAN.—Q. Captain, how do you spell the names of those two Japanese men-of-war?

A. “A-s-a-m-a”; “K-a-sa-g-i”—“K-a-s-a-g-i.”

(Testimony of J. E. McCulloch.)

Q. You are spelling it correctly, are you?

A. How do I know. What are you asking me for—to spell Japanese correctly in English?

Q. That is what I asked you for.

A. Well, I cannot.

Q. In other words, you cannot spell the names of the two Japanese ships?

A. No, sir, not correctly as you want me to. I spell them as they are sounded to me.

Q. Do you know whether they were the only two Japanese war-ships in the port at that time?

A. Do I know what?

Q. Read the question, Mr. Reporter.

(Question read by the Reporter.)

A. No, sir, I do not. I don't know anything about that.

Q. Do you know the names of any of the officers on the one you piloted in? A. No, sir, I do not.

Q. What did you mean, Captain, when you said during the statement you have just made, that these things were only from memory—do you trust or distrust your memory as to these statements?

A. I don't distrust my memory, sir.

Q. Then, what did you mean by this statement that these things were only from memory?

A. Read the statement, please.

Q. Turn back, Mr. Reporter, and read that remark of the witness.

(Record read by the Reporter.) [1102—978]

A. What does memory mean? Memory is a remembrance of circumstance, and I remember those

(Testimony of J. E. McCulloch.)

things perfectly, so if you have any doubt—memory is simply a matter of memory, and I remember them. Do you want a dictionary meaning? Bring me a dictionary and let us see what memory means.

Q. Then, we are to place no significance upon that statement?

A. Yes, because that is straight from my memory, and my memory is **not at fault, sir.**

Q. Captain, that was a pretty rough bar, was it, as you passed through the North Channel?

A. Yes, it was a pretty rough bar.

Q. Terrible rough?

A. I don't know what you mean by terrible rough; and when you talk about a **terrible rough bar** you speak of something that you don't know anything at all about because you have never seen one.

Q. Well, I am always willing to learn, Captain, and I am asking you if this was a terrible rough bar.

A. Well, you cannot learn, sir, unless you got out there and see. That is the only way to learn a terrible rough bar. That bar at that time was so rough that I would not dare to bring a 22-foot ship through it.

Q. In your judgment it was a terrible rough bar, then?

A. I don't say anything at all about terrible, because I don't know anything at all about your meaning of these words. I tell you, sir, that I would not have brought a 22-foot ship over that bar on that day, knowing as much as I do about the bar. Ter-

(Testimony of J. E. McCulloch.)

ribly has no meaning to me; terrible has no meaning to me.

Q. Would you have brought any kind of a ship over the bar?

A. Yes, I would have brought a 10-foot ship over the bar and [1103—979] I know she would not have struck, and if she was not long enough to have turned over, I would have brought her over.

Q. What do you mean by a 10-foot ship?

A. 10-foot draught.

Q. Was the bar breaking so as to impede the speed of the vessel that you were piloting?

A. Which way is the ship going, sir.

Q. I was not there, Captain; you were.

A. I am not talking about my ship. I brought her through the North Channel because I would not take her to the bar. If you are asking any questions at all in regard to any other ship; my ship I took to the North Channel. I know nothing about the bar with my ship at all.

Q. Would that bar, breaking as it was, impede the speed of your ship that you piloted, as she passed through the North Channel? A. The bar—

Q. (Intg.) Please answer the question.

Mr. DENMAN.—The question is not intelligible.

A. No, it is not intelligible. Your question is not intelligible, sir.

Mr. McCLANAHAN.—Q. In other words, the break of the bar had no effect on the ship you were bringing through the channel.

A. Through the North Channel, no, sir.

(Testimony of J. E. McCulloch.)

Q. None whatever?

A. None whatever. I am going though the North Channel, and the bar has no effect on the North Channel.

Q. Of course, when I say "bar" I mean the sea. You understand that, don't you?

A. No, sir, you are talking about the bar. I don't understand anything you want to put in except the bar. When you talk about a thing, talk about it as it is, no suggestive questions or anything else. My dear sir, I want you to understand one thing: the bar is a proposition [1104—980] which I don't think you know anything of at all about and your questions evidently show that you don't know anything about it.

Q. All right. Now, Captain, I will try to reframe the question so as to meet your ideas.

A. No, sir, meet your own, so that you can get something out of me if you want it.

Q. Would the sea breaking on the bar that day have any effect upon the speed of your vessel as she was being piloted through the North Channel?

A. My vessel? What are you talking about? The ship which I came in with—

Q. Yes, Captain.

A. Simply and solely and wholly my ship—is that it?

Q. Yes, Captain.

A. And without reference to any other ship?

Q. Yes, Captain.

A. All right. Will you note that, please, that all

(Testimony of J. E. McCulloch.)

this is simply in reference to my ship. Now, then, sir, now give me your question simply with reference to my ship.

Q. Mr. Reporter, please read to the witness my question.

(Question read by the Reporter.)

A. Yes, sir, a very slight and almost imperceptible acceleration of her speed as she was at that time coming before the swell which was coming through the North Channel, by effect of the westerly swell which was in the ocean on the outside.

Q. It would increase the speed of your ship a little? A. Almost imperceptibly.

Q. That is, you had a following swell, then?

A. A following swell, yes, sir.

Q. Did it affect the ship on the way of abeam movement at all?

A. If you wish to have any effect of the swell on abeam [1105—981] or any other way, take the chart, see the courses proceeded through the North Channel, figure out where the swell was striking her, get some expert who might figure it out decimally and then they might tell you something about it. I on the bridge knew very well what I was doing with my ship and was not bothering particularly about the following swell. I was bothering more about what was ahead of me, not what was behind me.

Q. Now, Captain, will you please answer my question.

A. I don't know what your question is yet.

Q. Well, I will give it to you again, perhaps a little

(Testimony of J. E. McCulloch.)

more intelligibly. A. Probably.

Q. I want to know whether the sea that was breaking over the bar as you passed through the North Channel affected your ship in its abeam movement; do you know what that means?

A. At what position and at what particular time of my passage through that channel do you want to know the effect of the sea on that ship?

Q. I want to know the effect of the sea on that ship on its beam at any time.

A. On her beam at any time?

Q. Yes, Captain.

A. Well, you will have to get it down to a finer point than that, because you are taking things where I am changing my course to come out of the channel, to go into the channel and to proceed through the channel. You cannot get at any such thing with one question.

Q. Did it have any effect on your ship?

A. Did what have any effect on my ship and at what time?

Q. The swell, at any time, that was breaking over the bar.

A. Yes, sir, when I was coming out of the North Channel it had such an effect that they had to secure everything on board of [1106—982] the vessel to protect themselves from having them break adrift when I was coming out of the North Channel with the sea from the west bank abeam of me.

Q. Did they have the life-lines out?

A. I am up in the pilot-house and I give orders

(Testimony of J. E. McCulloch.)

to see everything secured for passing through a dangerous sea. I know not at all what precautions they are taking. I have no time to go and see any of those things. My orders are supposed to be obeyed.

Q. You just told us that everything was made secure on the ship there to keep it from being washed away.

A. I did not tell you it was made secure; I told you I gave orders to make it secure.

Q. Did you order out the life-lines?

A. I gave orders to the executive officer of that man-of-war to see that everything was secured for going through a rough sea, sir.

Q. You are a member of the Pilots' Association, are you, Captain?

A. No, sir, I am a San Francisco bar pilot.

Q. Haven't the pilots an association?

A. No, sir, not that I know of.

Q. Do you know Captain Swanson?

A. Yes, I cruised with him.

Q. You and he are members of no association?

A. Not at all, sir. He cruises in the same boat with me.

Q. He is not a member of any association?

A. Not that I know of, only the San Francisco Pilots' Benevolent Association, if you mean that. That is the only association that I know of.

Q. What is that association?

A. A benevolent association, with solely benevolent properties, the same as any other benevolent association. [1107—983]

(Testimony of J. E. McCulloch.)

Q. They have no attorney, have they?

A. No, sir, not that I know of.

Q. How long have you known Captain Swanson?

A. Oh, let me see. Does this have to be exact or is it a matter of memory? Will memory be allowed?

Q. Memory will be allowed.

A. I think I have known Captain Swanson since 1881; I think that is about the time.

Q. How long have you and he been fellow pilots?

A. Well, 18 years I have been a pilot, and he was a pilot before me; so it must be 18 years.

Q. You have heard of the steamer "Selja," have you—the Norwegian steamer "Selja"?

A. The only time I ever knew of the "Selja" was when I came ashore from that man-of-war and heard that the "Beaver" had run her down.

Q. You never heard of her before that?

A. Never heard of her before that; I didn't know anything about her and have not known much about her since.

Q. And how long have you been a pilot here?

A. 18 years. That must not be strange to you because I have not piloted only one of the O. & O. steamship boats ever since I have been 18 years a pilot. You must not think that is strange.

Q. I have not asked you about piloting the "Selja"; I was simply asking you about your knowledge of the "Selja."

A. I don't know her; I never saw her.

Q. And never heard of her—I mean with this ex-

(Testimony of J. E. McCulloch.)

ception here? A. Oh, yes, put in your exceptions.

Q. You never heard of her, except for this exception?

A. That is the only time I ever remember having heard of her. [1108—984]

Mr. McCLANAHAN.—That is all, Captain.

Redirect Examination.

Mr. DENMAN.—Q. Captain, you recollect the fact, do you not, that I am your attorney as an individual, don't you?

A. As an individual, yes.

Q. But not attorney for your association?

A. There is no association. You cannot find an association. If you can, you beat me—I would like to. Now, right here, may I say what I have to say?

Q. Yes.

A. You can't do a darn thing for any of those twenty unless I say so, can you?

Q. I don't think so.

A. Well, where is the association—not much.

Recross-examination.

Mr. McCLANAHAN.—Q. What do you mean by “those twenty”—in your last statement here?

A. Oh. I thought you had done with me?

Q. I have not commenced with you yet.

Mr. DENMAN.—Q. Who are the twenty?

Mr. McCLANAHAN.—Just a moment, Mr. Denman. Please don't interject your remarks here.

Q. I want to know, Captain, what you meant when you used the expression “those twenty”?

(Testimony of J. E. McCulloch.)

A. How did I use it? Have you got that down too?

Q. Mr. Reporter, turn back and read that.

(Record read by the Reporter.)

A. Will you pardon me one moment? Gentlemen, I believe that most of you are lawyers—

Mr. DENMAN.—Is this outside the record?
[1109—985]

Mr. McCLANAHAN.—No, it is inside.

A. (Continuing.) Well, I am not talking in the record, nor was I talking in the record after you discharged me; I was not talking in the record.

Q. Now, Captain, having heard read to you—

A. (Intg.) I am still on record?

Q. Yes, still on record.

A. Now, I think I will distinctly state where this thing stands in regard to the twenty which I mentioned; we are not an association; under no consideration are we an association; but Mr. Denman, as he said there,—am I not belonging to you—what were the words you used?

Mr. DENMAN.—I said, was I not acting as your attorney?

A. (Continuing.) Yes, acting as my attorney. I said yes, he was so acting as my attorney, but he required my signature for anything which he had to do. Is that correct, sir?

Mr. DENMAN.—That is correct.

Mr. McCLANAHAN.—Q. Now, will you please answer my question; what did you mean by referring to “those twenty”?

(Testimony of J. E. McCulloch.)

A. Because there are twenty pilots.

A. You said they could not do anything without your signature?

A. No, I did not; I said Mr. Denman could not do anything for me without my signature.

Q. Well, what is your connection with the twenty pilots?

A. I am simply one of the twenty San Francisco pilots.

Q. Are you the president of the pilots?

A. No, sir.

Q. The secretary? A. No, sir.

Q. Do you co-operate at all in your work?

A. Perhaps.

Q. Is there a pilots' trust here?

A. No, sir, there is no pilots' trust here. [1110—986]

Mr. McCLANAHAN.—That is all.

Mr. DENMAN.—That is all.

The WITNESS.—Now, I want to speak again—

Mr. McCLANAHAN.—Put it down, Mr. Reporter.

The WITNESS.—Oh, yes, put it down again if I speak. Gentlemen, I want to tell you one thing—

Mr. DENMAN.—It is going in, Captain.

The WITNESS.—(Continuing.) All right. I want you to understand, sir, that the courtesies which you demand from the outside you do not extend to those you bring into you in here. You said, sir, that you were done with me.

Mr. McCLANAHAN.—I beg your pardon, Captain, I thought I had been courteous to you.

(Testimony of J. E. McCulloch.)

The WITNESS.—I beg your pardon, you did.

Mr. McCLANAHAN.—Haven't I been courteous to you, Captain?

The WITNESS.—No, sir, not in that matter, when you said you were done with me and then immediately referred to your Reporter.

Mr. DENMAN.—We tender to the libelant the use of the steamer "Beaver" for the purpose of manœuvering her to determine the course that she was pursuing when going ahead at 15 knots speed, or 12 knots speed, and the helm is put hard-a-port, and her propeller full speed astern.

Mr. McCLANAHAN.—We have no curiosity in the matter at all.

Mr. DENMAN.—And we will conduct the experiment ourselves, if our opponent does not, on Friday of this week, and thereafter put on witnesses to the experiment, inviting the expert [1111—987] witnesses for the libelant to witness the experiment.

Mr. McCLANAHAN.—We give you notice now that we shall object to any such evidence. We will be very glad to accept of your invitation, however, for a boat ride.

Mr. DENMAN.—Then I understand that if we go through with this experiment you will be present?

Mr. McCLANAHAN.—I myself—I don't know. I may be in by that time if this case keeps up much longer.

Mr. DENMAN.—But your side will be represented?

Mr. McCLANAHAN.—Not represented in the

(Testimony of J. E. McCulloch.)

way you are thinking of. We accept the invitation to go out on the "Beaver."

Mr. DENMAN.—I mean will you be present as counsel for the libellant?

Mr. McCLANAHAN.—No, not as counsel. I didn't know you were inviting me as counsel.

Mr. DENMAN.—We are inviting you as counsel to appear there at this experiment to determine what the vessel will do under the circumstances I have described.

Mr. McCLANAHAN.—I cannot be there as counsel.

Mr. DENMAN.—Will you be there as counsel subject to any objection you have to make to the experiment?

Mr. McCLANAHAN.—Yes. I don't know that I will be there myself but I will be represented, subject to any objection that we may make. As a matter of technical knowledge and information I should think that our experts should be very interested in that experiment. We will be glad to cooperate with you in making it along the lines of the questions that were put to them and answered by them.

(An adjournment was here taken until Thursday, August 3d, 1911, at 10:30 A. M.) [1112—988]

Thursday, August 3d, 1911.

[Testimony of **A. G. McAdie**, for Claimant (in Surrebuttal).]

A. G. McADIE called for the claimant "Beaver" in surrebuttal, sworn.

Mr. DENMAN.—Q. Professor McAdie, what position do you hold?

A. I have charge of the United States Weather Bureau in this section.

Q. That is an appointive position, a federal appointive position? A. Yes, sir.

Q. In the Civil Service?

A. In the Civil Service.

Q. How long have you held that position?

A. About 15 years.

Q. How long have you been on this coast?

A. About 16 years.

Q. What are your duties in that position?

A. To keep records, see that they are properly kept, relating to the weather and other allied conditions.

Q. Do you recognize this document reading: "Tracing from Marigram of tide-gauge, Presidio, Cal., from 0^h November 21st, to 18^h November 22, 1910." A. Yes, sir.

Mr. McCLANAHAN.—What is the purpose of this examination, if you care to state it, Mr. Denman?

Mr. DENMAN.—The purpose is to show that your two fishermen were mistaken as to the condition of the bar on that day at the hour they crossed.

(Testimony of A. G. McAdie.)

Mr. McCLANAHAN.—We will have to make the same objection to the testimony of this witness as it relates to any condition of weather or sea condition on that day as not surrebuttal. And we ask that the same objection that we made as to the testimony of the witnesses be inserted here, that is to say, we [1113—989] object to the question as being improper surrebuttal, it appearing by the record that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal; and I will add the further objection that the question is immaterial, irrelevant and incompetent.

Mr. DENMAN.—And that is understood as to all the witnesses we put on for this purpose?

Mr. McCLANAHAN.—If you are going to put them all on to establish the same thing it is. I understand that you stipulate that the objection may apply to all the examination, without the necessity of repeating it?

Mr. DENMAN.—Yes. And I will say, in this regard, that I did not have this information at the time that the fishermen were examined.

Q. What is that document, Professor?

A. This is a record of the tide-gauge, kept at the Presidio, under the auspices of the United States Coast and Geodetic Survey.

Q. When did that first come into your possession?

A. Sometime before the end of the year 1910.

(Testimony of A. G. McAdie.)

Q. What was the occasion of your receiving it?

A. Captain Westdahl in charge of the Coast Survey Office, in this city, called my attention to a peculiarity in the record at this point. I may say that we have been studying those things for some-time.

Q. Indicate the point.

A. At 4 o'clock in the morning, November 21, 1910, until 8:30 there was a peculiarity in the record.
[1114—990]

Q. What did you discover in regard to that peculiarity in the curve? In the first place, what does it indicate?

A. It indicates a marked displacement of the level of the water in San Francisco bay at that point.

Mr. McCLANAHAN.—Q. And at that time, Professor?

A. At that time, yes; at that time, at that point.

Mr. DENMAN.—Q. From what direction could that displacement come? Where would it be likely to come from?

Mr. McCLANAHAN.—Q. That is, Professor, if you know.

A. It could possibly come from many directions and from many sources.

Mr. DENMAN.—Q. Presuming now that there were no seismic disturbances in the bay itself, from what direction would the water have to come in order to create that mark on the instrument?

Mr. McCLANAHAN.—I raise the further objection that there is no evidence in the record that

(Testimony of A. G. McAdie.)

would support the hypothesis of the question.

Mr. DENMAN.—Q. Presuming that there was no seismic disturbance in the bay itself, from what direction would the rise in the water have to come in order to make that mark on the record?

A. Naturally from outside the heads.

Q. That indicates a rising in the waters?

A. Yes, a change in the level of the water.

Q. Is that an unusual amount that was raised?

A. I believe it is, as far as my knowledge of these records goes. Captain Westdahl can testify better as to that.

Q. Did you make any examination to determine the cause of that sudden rise in the waters there?

A. Yes, sir. [1115—991]

Q. What examination did you make?

A. We studied the record from a number of points on the coast, particularly with reference to atmospheric conditions and change in pressure.

Q. And what did you discover?

A. We discovered that it was probably due to a squall which was noted at various points along the coast in this vicinity at that hour.

Q. A squall—let me ask you, what did the barograph indicate at that time for these various places?

A. It indicated a marked change in pressure and a squall.

Q. That marked change in pressure was a heavy-ing or lightening of the atmosphere; did it increase or decrease in its pressure?

A. The pressure fell and rose rapidly, making

(Testimony of A. G. McAdie.)

what we would call a hooked or a marked fluctuation in the pressure curve. It was out of the ordinary.

Q. It was out of the ordinary? A. Yes, sir.

Q. That was noted in how many places?

A. In a number of places. I can specify the Chabot Observatory, the floor of this building, the Merchants Exchange, the roof of this building, the Merchants Exchange, the Lick Observatory, the Santa Clara College Observatory. And I also obtained records from points as far south as San Diego and as far north as Eureka.

Q. Was there ever any official notice made of this occurrence?

A. Yes, there was a report submitted to the Chief of the Weather Bureau.

Q. By whom? A. By myself. [1116—992]

Q. Was that subsequently printed?

A. Yes, sir.

Q. Now, I ask you to examine the curve as it proceeds from that time until 5 o'clock on the afternoon of the 22d; what can you say as to the oscillation of the recording needle from the 21st to the time indicated on the 22d?

A. Well, from a study of this particular record with Captain Westdahl, at the Coast Survey Office, and from a study of other tidal records, we have come to the conclusion,—we have come to the conclusion—I may say both of us, although that may not be testimony—we have come to the conclusion that this is the record of the bar breaking and that this unusual

(Testimony of A. G. McAdie.)

rise and fall of the level of the bay was due to that squall.

Q. How severe does the bar appear to be breaking on the morning and afternoon of the 22d, as shown by that record?

A. I should say that it was a very heavy bar.

Q. A very heavy bar? A. Yes, sir.

Q. What time does it begin to be really heavy?

A. Well, there is evidence of an increasing bar at the very beginning of the 22d; that would be midnight of the 21st—22d, and it is heavy right through, and particularly heavy on the afternoon of the 22d.

Q. That heavy bar continues until 5 o'clock as shown there? A. Yes, continues on until 6.

Q. That particular record you hold in your hand was the one sent you by Captain Westdahl?

A. Yes, sir.

Q. And it began at the point indicated and ended at the point shown there? A. Yes, sir.

Q. That is all there was to the record that was sent to you?

A. This is a portion of a continuous record. This is all that [1117—993] was sent to me.

Q. Where is the continuous record, if you know?

A. I understand it has gone to Washington.

Q. I presume you want to keep this for your office, do you not? A. Yes, sir.

Mr. DENMAN.—Mr. McClanahan, I have here a blue-print of that. Will you examine it? I want to put it in evidence.

Mr. McCLANAHAN.—There is no need of my

(Testimony of A. G. McAdie.)

examining it if it is a blue-print.

Mr DENMAN.—You will accept it in lieu of the original?

Mr. McCLANAHAN.—I will not question that it is a blue-print.

Mr. DENMAN.—Then I will offer that. It will be marked Claimant's Exhibit McAdie 1. You may take the witness.

Mr. McCLANAHAN.—No cross-examination.

[Testimony of F. Westdahl, for Claimant (in Surrebuttal).]

F. WESTDAHL called for the claimant "Beaver," in surrebuttal, sworn..

Mr. DENMAN.—Q. Captain Westdahl, where were you born? A. In Sweden.

Q. When did you first get your master's papers?

A. My first master's papers were in 1863, and first-class master's papers in 1864.

Q. You are connected with the Geodetic Survey now, are you not? A. Yes, sir.

Q. What vessels have you commanded in the last 10 years?

A. I have commanded the "Gedney," the "Mac-Arthur" and the "Pathfinder."

Q. What is your present position?

A. I am an assistant in the Coast Survey, in charge of the sub-office in San Francisco. [1118—994]

Q. What was the "Pathfinder"?

A. The "Pathfinder" was a steel steamer, about 600 tons; she is a coast and Geodetic Survey vessel.

(Testimony of F. Westdahl.)

Q. Are you familiar with the instrument known as the marigraph? A. Yes, sir.

Q. Is there one located in the Bay of San Francisco? A. Yes, sir.

Q. Whereabouts?

A. At the wharf at the Presidio.

Q. How long has it been there?

A. I cannot answer that question exactly; it used to be in the early '50's at the Fort Point Wharf; from there it was transferred over to Sausalito, and from Sausalito back to the Presidio Wharf. It must have been over 20 years ago that it was transferred, as near as I can tell.

Q. So it has been at the Presidio Wharf for about 20 years? A. Yes, sir.

Q. What does that instrument do?

A. It records the rise and fall of the water.

Q. Does it record the oscillations of the water as caused by swell or sea in the ocean? A. Yes, sir.

Q. Have you had any occasion to compare the records of the marigraph with the records kept by the lookouts at Pt. Lobos, with regard to the condition at the bar?

Mr. McCLANAHAN.—We will have to make the same objection to the testimony of this witness as it relates to any condition of weather or sea conditions on that day as not surrebuttal; that is to say, we object to the question as being improper surrebuttal, it appearing by the record that the claimant-respondent's case is pregnant with the subject matter [1119—995] of the question, to wit, the weather

(Testimony of F. Westdahl.)

conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal. I will add the further objection that the question is immaterial, irrelevant and incompetent. And it is understood, Mr. Denman, that you stipulate that my objection applies to all the questions asked the witness on this same line and for the same purpose.

Mr. DENMAN.—Yes. And also let it appear that Mr. Denman states that he had no knowledge of any of these matters until after the fishermen had testified as to the condition of the bar :

A. Yes. In 1898 I—

Mr. McCLANAHAN.—(Intg.) Excuse me for interrupting you, Captain. I raise the further objection to that that it is calling for hearsay evidence in part. Now, you may answer the question, Captain. Excuse me for interrupting you.

A. (Continuing.) We have had a man stationed at Pt. Lobos looking after the condition of the bar, and afterwards comparing his records with the marigram—when it was taken off the instrument at the Presidio.

Mr. DENMAN.—Q. What was the result of that comparison?

Mr. McCLANAHAN.—We make the same objection, and calling for hearsay testimony.

A. We could tell when the bar was rough by the markings on the marigram.

Mr. DENMAN.—Q. Was there a close correspondence between the two observations?

(Testimony of F. Westdahl.)

Mr. McCLANAHAN.—That is objected to upon the same ground and because it is leading.

Mr. DENMAN.—Q. Was there or was there not a close correspondence [1120—996] between the two records?

A. I have not personally examined that record.

Q. You have not? A. No.

Q. This is simply information from the office?

A. Yes; it was during my absence from the office.

Q. Have you a record of the marigraph for the month of July of this year?

Mr. McCLANAHAN.—I object to that as immaterial.

A. This is a tracing that I have made from the marigram for July, that has just been taken off the machine.

Mr. DENMAN.—Q. What do the tracings show?

Mr. McCLANAHAN.—I object to that upon the ground that the tracings speak for themselves. I should like to ask you, Captain, did you make those tracings?

A. My clerk in the office made them.

Q. You did not make them? A. No, sir.

Mr. McCLANAHAN.—I object to that as hearsay and not the best evidence.

Mr. DENMAN.—Are you going to make me bring the clerk here to show that the tracing corresponds with the original?

Mr. McCLANAHAN.—The tracing itself? Is not this the original?

(Testimony of F. Westdahl.)

The WITNESS.—This is the tracing from the original record.

Q. Who made the original?

A. The original is made from the machine, from the record.

Q. How did the tracing originate? You must have had some original from which you made the tracing.

A. Yes, to be sure. The original is a long piece of paper that stays on the machine for one month, and this is a tracing from portions of it, simply to show one day in July when it [1121—997] was very smooth and another day to show the roughest day in July.

Mr. McCLANAHAN.—Now proceed. My objection stands.

Mr. DENMAN.—Just a moment. I want to make that clear. Do you insist that we bring the clerk here who made the tracing off the record of the mari-graph itself?

Mr. McCLANAHAN.—No, I do not. I will take the captain's word for it that the tracing was made by the clerk.

Mr. DENMAN.—Will you further stipulate that it is a correct tracing?

Mr. McCLANAHAN.—Q. You believe it to be correct, do you Captain? A. Yes, I do.

Mr. McCLANAHAN.—All right.

Mr. DENMAN.—Q. That tracing shows you say the maximum and the minimum of oscillations in the month of July of this year? A. Yes.

(Testimony of F. Westdahl.)

Mr. DENMAN.—We offer it in evidence and ask that it be marked as Claimant's Exhibit Westdahl 1.

Mr. McCLANAHAN.—We object to it as hearsay, and as immaterial, irrelevant and incompetent, having no bearing upon the issues in this case.

Mr. DENMAN.—Now, Mr. McClanahan, will you admit that that is a correct copy of the record made by the marigraph for the month of July, for the days indicated on it?

Mr. McCLANAHAN.—I will not make any further admissions than I have.

Mr. DENMAN.—Then I will have to call the clerk here who actually made the transcription.

Mr. McCLANAHAN.—I don't think it is necessary if you will examine the record. [1122—998]

Mr. DENMAN.—You have made the objection that it is hearsay. It could be hearsay only on the theory that this man did not make it.

Mr. PAGE.—He asked Captain Westdahl if the tracing was correct, and the captain said yes, and then he said he accepted it.

Mr. DENMAN.—Q. Captain, will you examine this document marked Claimant's Exhibit McAdie 1 and tell me what it is?

A. This is a blue-print from a tracing that I had made from the marigram for November.

Q. Did you examine the original marigram yourself on that day? A. Yes, sir.

Q. Is this a perfect copy of it? A. Yes, sir.

Q. Why was that copy made of that?

(Testimony of F. Westdahl.)

Mr. McCLANAHAN.—I object to that as immaterial.

A. Because it was unusual markings, indicating some disturbance.

Mr. DENMAN.—Q. What did you think it was when you first saw it?

A. I thought it was an earthquake.

Q. Did you report the matter to the Department?

A. I did.

Q. What did you subsequently discover it was?

A. After consultation with Professor McAdie I found that similar markings having occurred on the biograph, we came to the conclusion that it was atmospheric pressure.

Q. What did that cause, as shown on the mari-graph?

A. It caused a rising and falling of the sea.

Q. Where was that first shown?

A. It was first shown here at 5 o'clock—between 4 and 5 o'clock, on the morning of the 21st.

Q. On the morning of the 21st of November?

A. Yes, sir. [1123—999]

Q. What happened after that continuing on through that day and the next, as shown by the mari-graph?

A. Evidently the storm that was first indicated, the reverberations from it reached our tide-gauge here on November 22; that is, the subsequent reverberations in the water continued; it continued longer than this record shows, but this is all the record I took off. From the beginning to the end we could

(Testimony of F. Westdahl.)

not take it, that is, we could not get a longer one; this was just the width of the tracing. First, I wanted to show the smooth curve, then as this sudden disturbance took place, and then as it continued along here. It was just accident that we had the November 22d record of it. I intended to show simply this, the beginning of the disturbance.

Q. What does the marigram show with reference to the condition of the ocean on the 22d?

A. It shows that it was very rough, that there was a heavy swell.

Q. Suppose the master of the steamship "Arizona," of 12,000 tons displacement, should testify that while in the North Channel, coming in at the hour of say between 12 and one o'clock of the 22d, that a heavy sea came across the Potato Patch, washed his decks and carried away the screen of the side-lights, would you say that that was a thing reasonably to be expected at that time?

MR. McCLANAHAN.—I object to the question further upon the ground that the hypothesis is not properly stated.

A. I should say that it was reasonable to expect it, especially if he got too near the 4-fathom bank, if he was not in the middle of the channel.

MR. DENMAN.—Q. Now, Captain, suppose the sea were in the [1124—1000] condition indicated by the marigram there, would it be reasonable to expect that a vessel steaming at a 15-knot pace directly into the swell, would have her speed cut down 3 knots? Would that be a reasonable expectation?

(Testimony of F. Westdahl.)

A. I should say that the slip would amount to that much going into a head-sea.

Q. As shown by the marigram?

A. The roughness of the water is shown by this marigram, yes.

Q. What will you say as to the condition of the sea as shown by the marigram on the 22d, with reference to other days, was it usual or unusual?

A. It was unusual.

Q. Have you had any records that were worse than that, that you can recall?

A. Well, that is very hard to tell. From my general experience with the tide record, I would say that this was a very rough swell. It is not unusual in our winter storms; we have many markings like this.

Q. In stormy weather?

A. Yes. I will state, furthermore, in connection with that, that we sometimes have a storm off the coast that will come in here, it will make the sea rough, but there will not be any wind at all. The storm is off the coast and it sends the reverberations through the water. They are the ones that are marked on this marigram. It need not necessarily be a local storm.

Q. Presuming that it appears that there was no wind on that afternoon of the 22d, would that in any way affect your opinion as to the roughness of the water? A. No, sir.

Q. Let me ask you: what would be the condition of the 4-fathom bank on the morning of the 22d, at

(Testimony of F. Westdahl.)

say between 4 and 5 o'clock, as indicated by the marigram? [1125—1001]

Mr. McCLANAHAN.—I object to that upon the ground that it is calling for the conclusion of the witness, the witness having given no definite intimation that he had any knowledge as to how the bar was breaking, except from the paper that he holds in his hands.

Mr. DENMAN.—I am not asking him as to the bar itself, simply as to the Potato Patch.

A. I should think it was rough on the 4-fathom bank. The 4-fathom bank breaks very much sooner than any other point on the bar, especially with an ebb tide. Sometimes with a northwest wind at the beginning of an ebb tide, the inner end of the 4-fathom bank will break.

Q. What can you say as to the condition of the 4-fathom bank between the hours of 3 and 5 o'clock in the afternoon of that day?

A. It must have been very heavy; it shows the greatest oscillations about that time.

Q. And is it conceivable that the 4-fathom bank was not breaking at that time, according to that marigram?

A. I should say not. It is not conceivable that it would not break.

Cross-examination.

Mr. McCLANAHAN.—Q. Your testimony, Captain, is based solely upon the marigraph, as to the condition of the 4-fathom bank? A: Yes, sir.

Q. And is dependent upon the verity of the mari-

(Testimony of F. Westdahl.)

graph? A. Yes, sir.

Q. You have no personal knowledge of the 4-fathom bank's condition on that day, November 22?

A. No, sir, I did not see it. [1126—1002]

Q. Suppose, Captain, there should be made to you a statement under oath that on the afternoon of November 22d, a boat passed over the Potato Patch and there were no breakers there, what would you say?

A. I should say it must have been a very fortunate thing for the man in the boat that there were no breakers there at the time. I should think it almost incredible that there were no breakers on the 4-fathom bank at that time—from this record.

Q. And yet if the man was one whose word you had no reason to doubt, you would feel obliged to take his evidence, would you not, as being true with reference to that?

A. I should say it was very singular. I cannot state how I should take his evidence. My position is simply this, that it is made by a machine, and it is unbiased. We know that when the marigraph makes a record of this kind, we know that the bar is exceedingly rough and that it is breaking.

Q. The machine is at the Presidio, is it?

A. Yes, sir.

Q. How far does the machine give you knowledge of the condition of the sea from the Presidio?

A. I don't understand your question. The machine gives the indications through pulsations that come in through the Golden Gate.

(Testimony of F. Westdahl.)

Q. At the Presidio? A. Yes, sir.

Q. How far can you rely upon the machine to tell you the condition of the sea,—how far in distance?

A. The machine at the wharf records what is taking place in the water, the risings and fallings in the sea.

Q. Does it tell you what is taking place in Humboldt Bay? A. No. [1127—1003]

Q. That is what I am trying to get at, how far can you rely upon the verity of the machine?

A. I can rely upon the verity of the machine in the vicinity of San Francisco and all along the coast. Certainly, with a record of this kind from as far as Pt. Reyes clear down to Monterey, and for a long distance offshore.

Q. Not farther than Pt. Reyes north?

A. Oh, yes. When the water is disturbed it transmits itself through long distances. For instance, we have records here when water is disturbed down in South America, it shows on our marigrams.

Q. Is there not a diminution of the disturbance as the distance increases from the marigraph?

A. Why certainly, yes.

Q. The machine shows most accurately right where it is in operation near the water? A. Yes.

Q. And less accurately as the distance increases from the machine?

A. Well—not less accurately, no, I should not say that.

Q. Less positively?

(Testimony of F. Westdahl.)

Mr. PAGE.—Less distinctly, I suppose.

Mr. McCLANAHAN.—Q. Less distinctly, is that it?

A. It is for the purpose of observing the rise and fall of the tide in San Francisco Bay that that machine is kept there. These markings show the condition of the sea outside, for the reason that our tides come in from the Pacific Ocean and come in through the narrow entrance at the Golden Gate, and when the ocean is largely disturbed, when large waves are coming in, they don't come in immediately through the Golden [1128—1004] Gate, they come in through pulsations. For instance, you can stand right by the machine, right near the machine, and when the machine is making these ordinary markings, you can look at the water and you cannot see any movement in it at all. These swells occupy about 5 minutes in passing. You cannot see them when you are standing alongside of that machine. The bay may be absolutely smooth and yet these pulsations are recorded. They come in through the water through the Golden Gate.

Q. Pulsations are particles of molecules of water, are they not? A. I suppose so.

Q. And they would be manifested on the mari-graph even if the sea were perfectly smooth?

A. At the station, yes.

Q. Yes, at the station? A. Yes, sir.

Q. So that this marigram here does not purport to show more than the oscillation of the molecules of the water?

(Testimony of F. Westdahl.)

A. That is an absolute rise and fall of the water.

Q. Of the molecules?

A. Well, of the water; of course, the water consists of molecules.

Q. It might be possible, Captain, that that disturbance shown on your blue-print there took place in a perfectly smooth sea?

A. Not a smooth sea outside, no.

Q. What kind of a sea outside would it be?

A. It would be a heavy sea outside.

Q. What do you mean by a heavy sea, a breaking sea?

A. Yes, a breaking sea. A sea does not break until it strikes an obstruction.

Q. I mean a capped sea?

A. I would like to explain this: a breaking is caused by a wave hitting the bottom. The theory is [1129—1005] that a wave is a motion of the water, a rounding motion of the water; for instance, if I run my hand under a sheet, the water is not transmitted from place to place, the same amount of water; it is simply the motion of the water that is transmitted. When the bottom of the wave hits something shallow, the bottom is retarded and the top falls over. That is a breaking sea.

Q. How do you explain a breaking sea where the wave motion does not reach as far as the bottom of the sea? That is caused by wind, is it not?

A. Yes, the top of the wave is thrown off by the strong wind. That is what we call white-caps.

Q. Would your marigram in this portion showing

(Testimony of F. Westdahl.)

the greatest oscillations, tell you whether the sea was breaking or smooth where the wave motion had not reached the bottom, that is, out to sea?

A. No, you cannot tell anything—for instance, you cannot tell—yes, you can tell. For instance, it would break probably where the oscillations were recorded as large as this, it would break probably in 6 or 7 fathoms of water.

Q. Would it break in more than that?

A. That I cannot tell. I have seen the Pacific Ocean break in 9 fathoms of water, off Cape Mendocino. I cannot say I have seen it break in any deeper water than that.

Q. *Is no* possible that the disturbance of the water out at sea, as shown by your instrument, was a disturbance accompanied by a perfectly smooth, long rolling swell, out at sea in deep water?

A. Well, that is quite possible; and when that smooth deep long rolling swell hits shoal water it would break.

Q. How long would you say the swells might be as shown by the oscillations on the blue-print out at sea in deep water?

A. You mean the distance between waves?

Q. Between the swells?

A. I could not say that. [1130—1006]

Q. Does not your blue-print give you any idea?

A. No, sir, it does not, because that motion is communicated to this machine through a small hole as large as a pencil. In the first place, the marigraph is what we call a one-twelfth scale, it records, one-

(Testimony of F. Westdahl.)

twelfth of the actual size. For instance, this from there to there is about two-tenths of a foot; the actual wave that caused that would be 12 times that amount. It is communicated through this machine by means of a little hole in the bottom of a tube as large as this pencil (showing).

Mr. DENMAN.—Q. You mean by that, Captain, the size of the wave at the Presidio?

A. At the Presidio, yes.

Mr. McCLANAHAN.—Q. If, however, the oscillations were those accompanying a long, rolling swell in deep water at sea, do you mean to say, Captain, that that would affect the speed of a vessel through the water? A. Yes, if it is a head sea.

Q. What would cause the diminution of speed?

A. The fact of running into a head sea.

Q. Now, we have a long rolling swell; is that what you call a head sea?

A. Yes, that would be a head sea, if it is against you.

Q. How would it affect the boat?

A. It would slow her down. It would cause more slip.

Q. Why? A. It would cause more slip.

Q. You mean the propeller getting out of the water? A. No.

Q. Why would it cause more slip if the propeller did not get out of the water?

A. Because the swell has a tendency to set you back. The theoretical distance the propeller will [1131—1007] send the ship ahead is by its pitch.

(Testimony of F. Westdahl.)

You can compute that. But there is a slip to it if there is an obstruction against the vessel, and a head sea is certainly an obstruction against the ship.

Q. In what way is it an obstruction? Do you know which way the wave movement is?

A. Yes, sir.

Q. Which way is it? A. How do you mean?

Q. The wave movement. You said you knew. Is it up and down or is it horizontal?

A. It is horizontal, of course, on the surface. It shows horizontal. What affects the vessel is the horizontal movement.

Q. Is it horizontal? Is it not a fact, Captain, that the wave movement is perpendicular, up and down?

A. Yes, sir.

Q. And not horizontal?

A. It also moves horizontally.

Q. Did you ever test that? A. No.

Q. You have seen sea-gulls at rest on the ocean, have you not? They don't move with the wave that passes along, do they? A. No.

Q. What keeps them in their place? If the wave movement was horizontal, would they not pass with the wave?

A. I think if you were to put an instrument on them and examine it you would find that they moved quite a little.

Q. You have never seen that done?

A. No, but common sense would tell me that.

Q. But the greatest movement would be up and down—perpendicularly? A. Oh, to be sure, yes.

(Testimony of F. Westdahl.)

Q. How would that perpendicular motion affect the speed of a vessel?

A. The perpendicular movement itself would not affect the vessel so much, except by plunging down into [1132—1008] the sea, that would affect her.

Q. It would affect the slip by exposing the propeller, would it not? A. Yes, sir.

Q. And that is the only way, is it not?

A. There is a movement—there is a horizontal movement to any swell, and it would affect the vessel's speed.

Q. And yet you are willing to admit that the perpendicular movement is greater?

A. I don't know that I am willing to admit that exactly; that is something that I will not testify to under oath, because it is something that I am not familiar with. I have studied the theory of waves, that it is a circular motion communicated right under a continuous movement. The particles of water are not displaced, that is, the same particles of water remain here but the movement in the water proceeds.

Q. Did I understand you, Captain, to testify in your direct examination that it would not be anything out of the way or unusual for a vessel to be retarded three knots, making 15 knots in a long rolling swell out at sea? A. Yes, I believe I said that.

Q. And that would all come from the horizontal movement of the wave? A. Yes.

Q. That is simply your opinion?

A. That is my opinion, yes.

Q. You have never tried it?

(Testimony of F. Westdahl.)

A. No, I don't think I have ever tried it.

Q. We are speaking, of course, of the influence on the boat irrespective of any wind; is that your understanding of the situation?

A. Wind generally accompanies waves of that character. [1133—1009]

Q. Did you have in mind wind when you spoke of the retardation of the 3 knots as being a possibility?

A. Yes, I think I had in mind both of them, both wind and sea.

Q. Both wind and sea? A. Yes, sir.

Redirect Examination.

Mr. DENMAN.—Q. Of course, Captain, the exposure of the propeller would diminish her rate of speed? A. Certainly.

Q. Presume, now, that the captain of the ship "Beaver" has testified that his ship, going into this sea, with a light wind, a negligible quantity of wind, was retarded from both the exposure of the propeller and the setting back of the sea 3 knots in 15, would you say that that was an unreasonable statement?

Mr. McCLANAHAN.—And the swell being a long rolling swell, Captain?

Mr. DENMAN.—Such a swell as shown by the marigraph, and no wind, or little wind?

A. I should say that it is not an unreasonable statement; in fact, if I were in command of a vessel going into a sea of that kind I would cut her down voluntarily. I would not drive her into a sea of that kind.

Q. You are familiar, are you not, with the waters outside of the Bay here? A. Yes, sir.

(Testimony of F. Westdahl.)

Q. Have you done actual surveying work in the Coast Survey? A. Yes, sir.

Mr. McCLANAHAN.—I object to this line of examination as not proper redirect examination.

Mr. DENMAN.—Q. How many years have you spent at that? [1134—1010]

A. I have been 44 years on the Coast Survey.

Q. Your position is a federal office, is it not?

A. Yes, sir.

Q. An appointive position? A. Yes, sir.

Q. Under the Civil Service? A. Yes, sir.

Mr. DENMAN.—I want to put in some testimony myself regarding the statements and admissions made by officers of the vessel who are libelling through Captain Lie, before United States Commissioner Brown, sitting for the Norwegian Consul, on the 26th day of November, 1910, on Saturday, four days after the collision.

Mr. McCLANAHAN.—Do I understand that this is in surrebuttal?

Mr. DENMAN.—No, not surrebuttal, but in the closing of our case. As I understand it, my theory of this case is that each of us has an affirmative case and each has a right to close his case.

Mr. McCLANAHAN.—I think the record shows that counsel for the respondent has closed his case sometime since. We object to this proposed statement by counsel as not being surrebuttal and as immaterial, irrelevant and incompetent. I suppose that it is intended to contradict the evidence of the

(Testimony of F. Westdahl.)

officers of the "Selja" taken in this case December 2d, 1910.

Mr. DENMAN.—In that connection I desire to testify as follows:

That on the day of this hearing before the Norwegian Consul, I was invited by someone in the office of the Consul to appear at the taking of this testimony, and while there [1135—1011] requested a copy of it to be made for me by the stenographer of Commissioner Brown in the usual method. I therefore took no notes of the evidence of those men and did not charge my mind with their statements. I was present at the taking of this testimony, and after it was over Mr. Lehner, the stenographer, informed me that he had been requested by Mr. McClanahan not to give me a copy of the testimony.

Mr. McCLANAHAN.—I move to strike that out as hearsay.

Mr. DENMAN.—This is to show diligence on our part to get the record for the purpose of cross-examining the witnesses the following week.

Mr. McCLANAHAN.—I move to strike out the testimony of what Mr. Lehner told the witness on the ground that it is hearsay.

Mr. DENMAN.—I thereupon asked Mr. McClanahan to furnish me with a copy of it, and he said he would not, nor would he give me permission to get a copy of it. I then asked Mr. Derby, his partner, for a copy, and he said that he would not accord us that privilege. We then commenced proceedings in perpetual entry in memoriam to obtain a copy of it,

(Testimony of F. Westdahl.)

which was resisted by the other side, and successfully resisted until after the departure of the Norwegian officers for abroad. We finally succeeded in getting a copy of it after we had made application to our Secretary of State to petition the Norwegian government for a copy.

I offer this testimony to show the reason why we were not in a position to cross-examine on this record at the time the testimony of the Norwegian officers was taken. The document from which I am now reading is a document left at my [1136—1012] office by someone from the Norwegian Consulate. Will you admit, Mr. McClanahan, that this is a copy of a statement of the "Selja's" officers made before United States Commissioner Brown, on the 26th day of November, 1910?

Mr. McCLANAHAN.—I cannot admit that.

Mr. DENMAN.—Was this copy made in your office, Mr. McClanahan?

Mr. McCLANAHAN.—No, sir, we had nothing to do with examination before Mr. Brown.

Mr. DENMAN.—Mr. McClanahan, have you seen the copy of the notes from which this was made since the testimony was taken before Mr. Brown?

Mr. McCLANAHAN.—I have not.

Mr. DENMAN.—The stenographer's original notes, have you not seen them?

Mr. McCLANAHAN.—No, I have not.

Mr. DENMAN.—Do you recollect that—

Mr. McCLANAHAN.—One moment. What are you doing? Are you examining me? Go on with

(Testimony of F. Westdahl.)

your evidence. I am an attorney in the case.

Mr. DENMAN.—I want to find out where the original notes are.

Mr. McCLANAHAN.—Well, I am objecting now as an attorney.

Mr. DENMAN.—Do you know where they are?

Mr. McCLANAHAN.—I decline to answer any questions coming from the witness.

Mr. DENMAN.—Well, presume for the moment that I am counsel in the case and that I have withdrawn from the witness-stand; now, I ask you, do you know where the original notes of Mr. Brown's stenographer are? [1137—1013]

Mr. McCLANAHAN.—I never saw them, I had never had them in my possession. I don't know where they are.

Mr. DENMAN.—Did you request Stenographer Bennett to give them up?

Mr. McCLANAHAN.—I decline to answer that question. What are you doing with me—putting me on the stand?

Mr. DENMAN.—I want to trace where they are.

Mr. McCLANAHAN.—Well, do it. I am not your detective. This is an unusual procedure, for me to be catechised here in this manner. I am not conducting your case. Proceed along the lines you see fit to, without asking my assistance. I will be as courteous to you as I can, but I am not finding evidence for you, good or bad.

Mr. DENMAN.—I will now address the question to Mr. Brown, the commissioner.

(Testimony of F. Westdahl.)

Mr. McCLANAHAN.—For the record?

Mr. DENMAN.—Yes.

Mr. McCLANAHAN.—Why do you have some questions you address in this offhand way in the record, and direct that others be left out? What is the point?

Mr. DENMAN.—Because I now discover that my question will bring forth some information that is of some value.

Q. Mr. Commissioner, is this document which I now show you a copy of the testimony taken before you as United States Commissioner on behalf of Henry Lund, Norwegian Consul at San Francisco?

The COMMISSIONER.—Of course, I could not tell accurately without comparing it with the original, but it has the general appearance of being a copy, if not a carbon, of the original. It has that appearance. I have no means of positively identifying it without a comparison. [1138—1014]

Mr. DENMAN.—Q. Who made this copy, do you know?

The COMMISSIONER.—I would assume that Mr. Lehner made it.

Mr. DENMAN.—Q. Do you know how many copies were made of that?

The COMMISSIONER.—I do not.

Mr. DENMAN.—We would have to put Mr. Lehner on the stand to find that out?

The COMMISSIONER.—Yes.

Mr. DENMAN.—Q. Do you know where Mr. Lehner's notes are?

(Testimony of F. Westdahl.)

A. I believe that they are in the custody of the Consul.

Mr. DENMAN.—Q. The Norwegian Consul?

The COMMISSIONER.—Yes.

Mr. DENMAN.—Q. At whose request were they turned over to him?

The COMMISSIONER.—At the Consul's request.

Mr. DENMAN.—Q. Did you have any consultation with Mr. McClanahan about that?

The COMMISSIONER.—No; no consultation with Mr. McClanahan. The Consul himself appeared—the representative of the Consul.

Mr. DENMAN.—Mr. McClanahan, will you admit that this is a copy?

Mr. McCLANAHAN.—I cannot, Mr. Denman. I know nothing about it.

Mr. DENMAN.—Then, I am afraid I will have to put Mr. Lehner on the stand.

Mr. McCLANAHAN.—Perhaps I can make some other admissions for you. What do you want to testify to?

Mr. DENMAN.—I want to show certain admissions of your [1139—1015] clients concerning their conduct, and the various statements they made there. Are you willing to have them read into the record?

Mr. McCLANAHAN.—No.

Mr. DENMAN.—Then we will have to wait until Mr. Lehner is here.

Mr. McCLANAHAN.—I will consent that the proceedings, the testimony given before Commissioner

(Testimony of F. Westdahl.)

Brown, acting for the Norwegian Consul, being the testimony of the officers of the "Selja," be put into the record as a whole, and that the testimony given by the officers of the "Beaver" and the "Selja" before the United States Inspectors of Hulls and Boilers, be put in as a whole. Will you consent to my suggestion?

Mr. DENMAN.—I object to that because I had the opportunity of cross-examination in neither case. Before the United States Inspectors the rule is that on a preliminary hearing you cannot cross-examine, and that the only questions allowed are those put in writing and presented through the inspectors. It is impossible to cross-examine a witness under those conditions. Before the Norwegian Consul, through Commissioner, I had no opportunity of cross-examining at all. I object to having statements going in that are of a self-serving nature, without the right to cross-examine.

Mr. McCLANAHAN.—Do I understand, Mr. Denman, that you are now offering evidence to rebut the statements made by the "Selja's" officers in this case?

Mr. DENMAN.—I am offering it as admissions of the officers who are litigants here.

Mr. McCLANAHAN.—Not as rebuttal?

Mr. DENMAN.—You can take it as you please; it is evidence in the case. [1140—1016]

Mr. McCLANAHAN.—Do you appreciate that you have not laid any ground for rebuttal evidence of this kind?

(Testimony of F. Westdahl.)

Mr. DENMAN.—I am simply following the usual course of the Admiralty courts, to offer evidence that is of a pertinent nature.

Mr. McCLANAHAN.—I will have to let you proceed in your own way to get this in the record. This is testimony I know nothing about. I know nothing about the correctness of the copy you have. I suppose Mr. Lehner will testify to it, though. I suppose that when he comes on the stand he will testify that it is correct. You believe, Mr. Denman, and you admit, do you, that it is a true copy?

Mr. DENMAN.—I know nothing about it except that it was sent to my office.

Mr. McCLANAHAN.—You want us to admit something that we know nothing about, but you decline to admit it yourself. If you admit that it is a true copy I will admit that it is and you can go ahead.

Mr. DENMAN.—Yes, I will admit that this is what Mr. Lehner would testify to as being a true copy, if he were here. It is admitted by both parties, as I understand it, that this is a copy of the transcript of Mr. Lehner's notes, the testimony taken before Mr. Brown on the 26th day of November, 1910, acting for the Norwegian Consul.

Mr. McCLANAHAN.—We make the same objection now that we have made right along to this line of evidence; it is not surrebuttal and is immaterial, irrelevant and incompetent.

Mr. DENMAN.—The following question was put

(Testimony of F. Westdahl.)

to the witness Arvid Bjorn, the third officer of the "Selja":

"Q. What was the course steered?

A. That was south 60 [1141—1017] east. I am not quite sure of the course,—I won't say for sure.

Q. Was steam or hand steering gear shipped?

A. Steam-steering gear.

Q. You say you are not quite sure of the course?

A. No, because I was terribly busy with the whistle all the time, you know, and I had to listen for other whistles I could hear. I did not pay any attention to the compass because the captain was there; he was the man who looked after it."

Mr. McCLANAHAN.—We make the further objection to the evidence upon the ground that no proper foundation had been laid for impeaching the witness. I ask that the evidence be stricken from the record.

Mr. DENMAN.—This is the admission of a party as well as general evidence.

Now, I will read a question addressed to Captain Lie at the same hearing:

"Q. How, or what course, did she appear to be heading, and at what rate of speed did she appear to come?

A. I would say that when she struck my vessel she had about ten knots, and her course was then at right angles to our ship, but I did not look at my compass to see what she was heading;

(Testimony of F. Westdahl.)

you see she swung some, but I should say she was steering somewhere about west by—oh, I can't say, but I should judge it was crossing our bow somewhere about a point or two points."

Mr. McCLANAHAN.—The same objection, no proper foundation has been laid for impeachment, and I make the same motion to strike.

Mr. DENMAN.—I would say in regard to this, that Captain [1142—1018] Lie already has been asked if he gave this testimony, and he testified that he could not recollect whether he had or had not. That is as I recall his testimony.

Mr. McCLANAHAN.—I object to the statement of the witness on the ground that the record speaks for itself as to what Captain Lie has said and as to what he has been examined on. It is improper for counsel to insert at this time his view as to what the evidence of the witness was or has been.

Mr. DENMAN.—Counsel apologizes.

Mr. McCLANAHAN.—This double role of counsel and witness is a little confusing.

Mr. DENMAN.—My testimony has ceased and my opponent asked me whether I was then testifying as counsel or as witness.

Mr. McCLANAHAN.—In what capacity are you talking now—as counsel or as the witness?

Mr. DENMAN.—I am reading into the record these statements.

Mr. McCLANAHAN.—As counsel?

Mr. DENMAN.—Certainly as counsel.

Mr. McCLANAHAN.—And not as a witness?

(Testimony of F. Westdahl.)

Mr. DENMAN.—Certainly not as witness. I am doing it as counsel.

Mr. McCLANAHAN.—I understood that you were sworn and that you are now testifying as a witness in this case.

Mr. DENMAN.—I was sworn for the purpose of showing our diligence in attempting to get this document before we examined these witnesses. You suggested, just before that, that this was taken before the examination of the witnesses. I wanted to show why we did not have the document. [1143—1019]

Mr. McCLANAHAN.—Well, you are a witness in the case now, Mr. Denman, and I have a right to cross-examine you.

Mr. DENMAN.—That right is open to you. But I am not attempting to defeat any right of cross-examination that you have, but I am reading these things into the record.

Mr. McCLANAHAN.—You are attempting to change your status from witness to counsel.

Mr. DENMAN.—I changed it before.

I will read this question and answer: The question was addressed to Rambek Eggen at the same hearing, and the following answer was given by him:

“Q. What was the ship’s rate of speed just preceding the accident?

A. The engine had been stopped about five minutes, so I should say there was no headway on her.”

Mr. McCLANAHAN.—I make the same objection, no proper foundation has been laid for impeaching

(Testimony of F. Westdahl.)

the witness' testimony, and I make the same motion to strike.

Mr. DENMAN.—The record also shows the following question and answer to and from Alfred Halbursen, first officer of the "Selja":

"Q. Give a statement, if you can, as to how it occurred, and the matters that preceded and followed it?

A. I was on deck when I heard three whistles, which called my attention to look around. I thought of some danger somewhere around in the neighborhood; just a little while afterwards, a few seconds, I saw the dark mass of the 'Beaver'—which proved to be the 'Beaver' afterwards—just a little after, a minute or so, the 'Beaver' struck us. She came in the direction something like a right angle on our ship as she was laying there. In a minute or so she struck us. It was a dense fog then." [1144—1020]

Q. How was the weather previous to and *under* the collision?

A. The weather was about the same as during the collision. dense fog, calm, and high westerly swell. * * *

Q. What was the ship's rate of speed at the time of the collision?

A. At the time of the collision I do not think she had any speed at all.

Q. Neither forward nor astern?

A. Well, during the collision the propeller

(Testimony of F. Westdahl.)

was working astern, but I do not think she had any speed either way; it is hard to tell, but I do not think she had speed either way."

Mr. McCLANAHAN.—I make the same objection and the same motion to strike.

Mr. DENMAN.—The next is a question addressed to Alfred Larsen, the second officer of the "Selja":

"Q. Please state how the collision occurred. Were you on deck?

A. Yes, sir, I was aft in the poop with the sounding machine.

Q. Will you state how the collision occurred, insofar as you can do so?

A. Yes. I had my work, I did not pay any attention to it, but I heard a whistle at 3 o'clock on the port bow, and about quarter past 3 I saw the steamer on the port side of us.

Q. She was coming toward you?

A. Yes, sir.

Q. At right angles to your course?

A. Yes, about that."

Mr. McCLANAHAN.—The same objection and the same motion to strike.

Mr. DENMAN.—I think that is all. [1145—1021]

Cross-examination.

Mr. McCLANAHAN.—Q. You were present at the time that the evidence of the "Selja's" officers was taken in my office, were you, Mr. Denman?

A. Yes.

Q. Representing the claimant and respondent in

(Testimony of F. Westdahl.)

this case? A. Yes.

Q. Mr. Charles Page was there also in the same capacity, was he not? A. Yes.

Q. You had abundant opportunity for cross-examining the officers at that time, did you not?

A. Yes.

Q. You made no objection to your inability to examine them at that time, did you? A. No.

Q. The paper that I hold in my hand is the transcript that you have been reading from, is it?

A. Yes.

Mr. McCLANAHAN.—We introduce that in evidence and ask that it be marked Libelants' Exhibit No. 24.

Mr. DENMAN.—We object to it upon the ground that it is hearsay and the self-serving statement of the officers taken at a hearing at which we had no right to cross-examine, and that it is irrelevant and incompetent. We move to strike it out upon the same grounds mentioned in the objection to its introduction.

Mr. McCLANAHAN.—We make the statement that the document is introduced to show the contents from which the excerpts have been read.

Mr. DENMAN.—Then we will move to strike out all portions of the document that are not in anyway explanatory of the matters put into the record by us.

Mr. McCLANAHAN.—Do I understand, now, that the claimant and respondent rests? [1146—1022]

(Testimony of John Von Helms.)

Mr. DENMAN.—No, we will have another witness here at 2 o'clock.

(A recess was here taken until 2 P. M.)

AFTERNOON SESSION.

[**Testimony of John Von Helms, for Claimant (in Surrebuttal).**]

JOHN VON HELMS, called for the claimant "Beaver," in surrebuttal, sworn.

Mr. DENMAN.—Q. Captain, how old are you?

A. I was 69 years old the last 28th of April.

Q. How long have you been at sea?

A. Since September 15, 1857.

Q. When did you get your master's license?

A. In the City of Hamburg Navigation School.

Q. I say when? A. In 1864.

Q. Have you been at sea ever since?

A. Ever since.

Q. What is your present occupation?

A. I am a bar-pilot for the port of San Francisco.

Q. That is a State office? A. A State office.

Q. How many bar-pilots are there?

A. Twenty at present.

Q. They are the licensed pilots for taking ships in and out of port?

A. Yes, sir, licensed by the State of California.

Q. Have you a federal license also?

A. Yes, sir.

Q. How long have you been a pilot on this bar?

A. Going on 10 years.

Q. How long have you been going in and out of

(Testimony of John Von Helms.)

this port? A. Since 1868.

Q. How was that,—coastwise or deep water?
[1147—1023]

A. Mostly coast-wise and some deep water; one voyage to Tahiti and another one to Siberia. The rest was all coast-wise.

Q. How far down the Coast have you gone?

A. I have gone as far as Manzanita, Mexico, and up the Gulf of California; then I have been up as far as Vancouver.

Q. Do you recollect the 22d day of November, 1910, the day of the collision between the “Beaver” and “Selja”?

A. Yes, I do sir.

Q. Did you pilot any vessel on that day?

A. I was on the “Nippon Maru” taking her to sea.

Q. What time did you leave the dock?

A. We left Pier 42 at one o'clock in the afternoon.

Q. What happened then?

A. We steamed down the bay and we were detained off Meiggs' Wharf by the Japanese fleet arriving, and asked to stop for the Japanese mail.

Q. How long did you delay for the mail?

A. Some 40 minutes.

Q. What happened then?

A. Then we started out down the bay but before we got down to Fort Point the fog shut in so dense that we were compelled to put back into the bay.

Q. From Fort Point? A. From Fort Point.

Q. How long did you remain in the bay?

A. We steamed into the bay about 2 miles, when

(Testimony of John Von Helms.)

it cleared up again all of a sudden, and we thought there was a chance to go to sea and we steamed out again.

Q. How far out did you go that time? ?

A. This time we got as far as Pt. Diablo and then it shut down thick again.

Q. Could you not see your way out from Pt. Diablo across the bar?

A. Not a thing you couldn't see; you [1148—1024] couldn't see the length of the ship.

Q. Could you see the bar before the fog shut down?

A. Oh, yes.

Q. What was the condition of the bar at that time.

Mr. McCLANAHAN.—I object to the question as being improper surrebuttal; it appearing by the record that the claimant-respondent's case is pregnant with the subject matter of the question, to wit, the weather conditions on November 22, 1910, and it not appearing that any new matter covered by the question was brought out in rebuttal. And I will add the further objection that the question is immaterial, irrelevant and incompetent. Will it be stipulated, Mr. Denman, that the same objection will apply to all the questions along that line that you will ask of this witness?

Mr. DENMAN.—Yes.

A. It was breaking heavy.

Q. About what time was that?

A. That was close on to 4 o'clock.

Q. What did you do then?

A. Then, being out so far, we stayed out, thinking

(Testimony of John Von Helms.)

that perhaps there would be an opportunity to go through the North Channel, because it was absolutely impossible to take a ship out safely through the mid-channel.

Q. How long did you stay out there?

A. We stayed out there until next morning at 8 o'clock.

Q. How did you go out then?

A. Then we went out through the North Channel.

Q. What was the condition of the bar during that night?

A. During that night it was breaking heavy all night long.

Q. Where did you anchor?

A. We anchored—if you make a right angle from the Cliff House and set one end of it at the Cliff House and the other end at Mile Rock, we were lying [1149—1025] there, in about 20 fathoms of water, well to the southward to avoid the ships that might possibly come in in the mid-channel.

Q. What can you say as to the condition of the sea, was it the usual or an unusual sea?

A. Quite unusual; more than an average heavy swell.

Q. You say that the bank was breaking around 4 o'clock, do you?

A. Oh, sure. Where we could not see it we could hear it.

Q. You could see it when you had reached Pt. Diablo. Could you see the bar then?

A. We could see it as we entered the Golden Gate

(Testimony of John Von Helms.)

from Fort Point; passing Fort Point we could see the west bank breaking heavily.

Cross-examination.

Mr. McCLANAHAN.—Q. When did the “Nippon Maru” leave Meiggs’ Wharf, Captain?

A. It was about—let me see—from one o’clock it took about 15 minutes to go down there; that was 1:15; and we delayed about 40 minutes there, so that makes it about 2:05 or 2:10, somewhere along there.

Q. You left Meiggs’ Wharf at 2:10?

A. Somewhere about that.

Q. And where were you intending to pass through to sea, through the North Channel or the Main Channel?

A. Through the North Channel; I was aware then before we started from the wharf, that the bar was breaking heavy.

Q. Excuse me, Captain, but I will ask you questions and you can answer them. Did you get into the North Channel on the first endeavor?

A. No, sir.

Q. You did not get as far as the North Channel?

A. No, sir.

Q. Because of the fog? A. Because of the fog.

Q. How soon after leaving Meiggs’ Wharf did the fog shut down [1150—1026] so thick?

A. Probably in about 20 minutes.

Q. And you say that was a dense fog?

A. Very dense, yes, sir.

Q. And you could not see more than a ship’s-length? A. Hardly that.

(Testimony of John Von Helms.)

Q. Did you anchor then?

A. No, sir, we turned around and went back into the bay.

Q. How far could you see at the time you turned around?

A. We could not see the length of the ship.

Q. Did that fog continue until you got back to the bay?

A. It continued until we got about 2 miles from Lime Point into the bay—or from Fort Point, which is the same distance.

Q. Then it seemed to lift?

A. No, sir. Then we waited there.

Q. How long did you wait?

A. Perhaps some 20 minutes. We waited there before we anchored because we thought there might be a possibility of its clearing.

Q. What time was it that you anchored?

A. We did not anchor.

Q. I thought you said you waited until you anchored?

A. We waited there before we anchored, but we did not anchor, it cleared up.

Q. What time did you arrive at that point that you thought of anchoring at?

A. When we stopped the ship?

Q. Yes. A. About 3 o'clock.

Q. About 3 o'clock? A. Yes, sir.

Q. And then it cleared up?

A. It cleared up of a sudden, yes.

Q. How long did it keep clear?

(Testimony of John Von Helms.)

A. Long enough for us to get down over to Pt. Diablo.

Q. Then what happened?

A. Then it shut down thick again.

Q. And it remained thick?

A. It remained thick until 6 o'clock in the evening.

[1151—1027]

Q. What time was it that it shut down thick the second time?

A. The second time it was somewhere about 4 o'clock, or a little after 4 o'clock, maybe; no, a little before 4 o'clock.

Q. How long was the interval of time during which the fog had lifted?

A. Probably half an hour; that is to say, the time it was foggy you mean?

Q. No, the time that it was not foggy.

A. Oh, well, that is another thing; probably after the second time when we started to go out to sea the second time, it probably was clear about 20 minutes.

Q. How far could you see in this fog the second time?

A. We could see probably 10 miles or so.

Q. In the second fog? A. No. in the clear time.

Q. I am talking about seeing in the second fog?

A. Nothing. We could see only the length of the ship.

Q. Just about to the end of the ship?

A. Just the ship's length.

Q. Did that condition extend into the North Channel?

(Testimony of John Von Helms.)

A. We could not get into the North Channel, so I don't know; I could not see it.

Q. When did you get into the North Channel, the next morning?

A. Yes, the next morning at 8 o'clock.

Q. How far were you from the North Channel when you attempted to pass through the second time on the afternoon of November 22d before the fog shut down?

A. When I passed Pt. Diablo it shut in thick. I did not attempt to enter the North Channel, at all.

Q. How far were you from the North Channel at that time? A. About a mile and a half.

Q. And what hour was that?

A. That was somewhere a little before 4 o'clock.
[1152—1028]

Q. And you didn't get nearer to the North Channel than a mile and a half at that time?

A. Well, we passed out in the main channel and as much as you approach the line, certainly I should pass by the approach to the North Channel, you certainly get nearer to it.

Q. How far were you from the Potato Patch at any time on November 22d?

A. The nearest we were to it was half a mile.

Q. On November 22d? A. Yes.

Q. How far were you from the Potato Patch at the time the weather had cleared up for the first 20 minutes or 30 minutes? A. We were in the bay.

Q. Well, how far is that from the Potato Patch?

A. 4 miles and a quarter from where we were.

(Testimony of John Von Helms.)

Q. You know where the Potato Patch is, do you?

A. Yes, somewhat; the so-called Potato Patch is a continuation of the west bank.

Q. That is up to the left, if I may use the expression, of the North Channel as you pass out, is it not?

A. Yes.

Redirect Examination.

Mr. DENMAN.—Q. Captain, is it conceivable that the west bank is breaking and that the Potato Patch is not?

Mr. McCLANAHAN.—I object to the question as calling for the conclusion of the witness.

Mr. DENMAN.—That is just what I want to get.

A. The west bank is the whole of it. The Potato Patch so-called, I don't really know where the boundaries are unless it is the whole west bank.

Q. You could see the west bank you say when you were off Pt. Diablo? A. Yes, sir.

Mr. McCLANAHAN.—I object to this as not proper redirect examination. [1153—1029]

Mr. DENMAN.—What was the condition of the west bank at that time?

Mr. McCLANAHAN.—I object to that upon the same ground, and I object to counsel's continuous re-statement of questions on his redirect examination in the case of nearly all of his witnesses.

A. Breaking heavy.

Mr. DENMAN.—Q. Mr. McClanahan has asked you about passing out in the fog and you answered that you were half a mile from the Potato Patch; could you hear it breaking?

(Testimony of John Von Helms.)

Mr. McCLANAHAN.—I object to that upon the same ground, that it is not proper redirect examination.

A. Yes, sir.

Mr. DENMAN.—Q. Could you hear the bar as you lay there that night?

Mr. McCLANAHAN.—We make the same objection.

A. Yes, I could hear it heavily, I could hear the breakers breaking heavily.

Mr. DENMAN.—Q. You said in your cross-examination to Mr. McClanahan, that you could tell before you left Meiggs' Wharf that there was a heavy bar? A. Yes, sir.

Q. How is that?

Mr. McCLANAHAN.—I object to that as an improper statement of the witness' cross-examination.

A. We can tell in the first place off of Meiggs' Wharf when the vessels are tied up there, they surge about with what the sailor calls the undertow. It is caused by a very heavy swell maybe miles off, as it is on this bar, and it causes a current of water not perceptible on the surface of the water at all, but it throws a vessel from the wharf and then on again, causing perhaps a parting of all the ropes that she is fastened [1154—1030] with, as is frequently done down at Meiggs' Wharf.

Mr. McCLANAHAN.—I will ask counsel for claimant and respondent if this is the close of his case?

Mr. DENMAN.—No, we will have another wit-

(Testimony of Knowlson Townsend.)
ness to-morrow morning at 10 o'clock.

(An adjournment was here taken until to-morrow
Friday, August 4, 1911, at 10 A. M.) [1155—1031]

Friday, August 4th, 1911.

[Testimony of Knowlson Townsend, for Claimant
(in Surrebutal).]

KNOWLSON TOWNSEND, called for the claimant "Beaver," in surrebuttal, sworn.

Mr. DENMAN.—Q. What is your occupation?

A. Marine engineer.

Q. Were you on the "Beaver" at the time of her collision with the "Selja"? A. Yes, sir.

Q. What position did you occupy then?

A. Second assitant engineer.

Q. Can you tell me how many revolutions you ran from say after leaving Fort Point until the time of the collision, about how many revolutions your engine ran? A. About 77.

Q. Did it go above that? A. No.

Q. Were you in the engine-room during all of that time? A. Yes, sir.

Q. Up to the time of the collision?

A. Up to the time of the collision.

Q. What was the condition of the sea, as indicated by the engines, after you got out to sea?

Mr. McCLANAHAN.—I object to the question as calling for the conclusion of the witness, he clearly showing by his evidence as occupying a position that it would be impossible for him to determine what the condition of the sea was. I also want to object to all

(Testimony of Knowlson Townsend.)

of this evidence as improper surrebuttal, and as being immaterial, irrelevant and incompetent.

A. Rough.

Mr. DENMAN.—Q. How could you tell that?

A. By the engines racing quite frequently.

Q. What about the motion of the ship? Was there any motion in the ship? [1156—1032]

A. Yes, sir.

Q. What was it? A. Pitching.

Q. After the collision, and on your return voyage, were you still in the engine-room? A. Yes, sir.

Q. What was the cut-off set for on the return voyage? A. 76.

Q. Did you go above that on the return voyage?

A. No; the cut-offs were not changed.

Cross-examination.

Mr. McCLANAHAN.—Q. You mean to say, Mr. Townsend, that you can tell down in the engine-room whether the “Beaver” was pitching, or not?

A. Yes, sir.

Q. Were the revolutions changed up to the time of the collision? A. Yes, sir.

Q. Had you told Mr. Denman of the change, prior to coming into this room? A. No.

Q. You had not? A. No.

Q. Had he asked you? A. No.

Q. How long before the collision were they changed?

A. If I remember right, about 15 minutes.

Q. Why do you qualify that? Don't you know exactly the time that they were changed?

(Testimony of Knowlson Townsend.)

A. I know the time they were changed, yes, sir.

Q. What time were they changed,—3 o'clock?

A. 3 o'clock.

Q. And that was in response to an order?

A. That was in response to an order, yes, sir.

Q. From whom? A. From the chief engineer.

Q. Did you note the time?

A. Yes, but I could not remember it right to the minute.

Q. I say, did you note it? A. Yes, sir.

Q. You are positive it was 3 o'clock. [1157—1033]

A. Oh, no, I would not say to the minute. I put it down in the book, but I don't remember now what it was.

Q. You testified it was 3 o'clock?

A. Well, not right to the minute you know.

Q. How far do you want to qualify your statement that it was 3 o'clock—a minute before 3 or a minute after 3—something like that?

A. It might have been that way, yes, sir.

Q. Could it have been 5 minutes after or 5 minutes before 3?

A. No, it was not before; oh, I could not say the exact time right to the minute.

Q. You have testified it was 3 o'clock; how do you want to qualify that? Would you say it was more than 5 minutes after 3?

A. No, it was not more than 5 minutes after 3.

Q. You put it down at the time, did you?

A. Yes, sir, I did.

(Testimony of Knowlson Townsend.)

Q. And you looked at the clock?

A. Yes, sir, I looked at the clock.

Q. And your memory now is that it was not more than 5 minutes after 3?

A. I would not say it was 5 minutes after 3.

Q. Do I understand you would not say it was more than 5 minutes after 3?

A. It was around 3 o'clock.

Q. Could it have been more than 5 minutes past 3?

A. I could not say; that is too far back to remember now.

Q. Could it have been more than 10 minutes after 3.

A. No, it was less than 10 minutes after 3.

Q. It was less than 10 minutes after 3?

A. Yes, sir.

Q. Are you quite sure of that?

A. I am sure of that.

Q. How did you get the order?

A. From the chief engineer.

Q. How?

A. Through the speaking-tube. [1158—1034]

Q. What did he say?

A. Reduce the revolutions to 76.

Q. And what did you do?

A. I reduced them.

Q. How? A. With the cut-off.

Q. How long did it take you to reduce them to 76?

A. Oh, it would only take less than a minute.

Q. You mean to say that in a minute after that order, you reduced them to exactly 76?

(Testimony of Knowlson Townsend.)

A. Yes, sir.

Q. Did you not have to experiment at all?

A. No.

Q. If an order is given to you to put the engines at a certain number of revolutions, you can do it at once? A. We do it right away, yes, sir.

Q. And accomplish it at once? A. Yes, sir.

Q. Without experiment?

A. Without experiment.

Q. Are you sure of that? A. Sure of it.

Q. How long have you been an engineer?

A. I have been in the business about 15 years.

Q. How long have you held your papers?

A. Since 1902.

Q. Who are you working for now?

A. The San Francisco & Portland Steamship Company, the "Beaver."

Q. You are on the "Beaver," are you?

A. Yes, sir.

Redirect Examination.

Mr. DENMAN.—Q. You made the entry in the book yourself, did you not? A. Yes, sir.

Q. And if you were to look at that book and saw that the entry 3:10, that would correct your memory as to what happened?

A. If I saw the book, yes, because I know I put it down.

Mr. DENMAN.—You will admit, Mr. McClanahan, that the book shows 3:10, will you not?

Mr. McCLANAHAN.—No.

(Testimony of David W. Dickie.)

Mr. DENMAN.—You have examined it, have you not?

Mr. McCLANAHAN.—I don't remember.

Mr. DENMAN.—That is all. [1159—1035]

Mr. McCLANAHAN.—Does the claimant and respondent close now?

Mr. DENMAN.—No, I want to examine Mr. Dickie. I understand there may be no need for our experiment with the vessel now at all.

[Testimony of David W. Dickie, for Claimant (Recalled in Surrebutal).]

DAVID W. DICKIE, recalled for the claimant "Beaver" in surrebuttal:

Mr. DENMAN.—Q. You remember Mr. Derby bringing you and your father and Mr. Heynemann over to my office yesterday afternoon?

Mr. McCLANAHAN.—I object to that as absolutely immaterial.

Mr. DENMAN.—Q. Do you recollect that, Mr. Dickie?

A. Yes. Let me state that correctly: I called up to McClanahan and Derby's office after the others, and the lady stenographer there told me that they had all gone over to Mr. Denman's office, and I followed on over to Mr. Denman's office.

Q. Well, I mean you remember having an amicable discussion there as to the conditions under which this trial experiment was to be made in the bay? A. Yes, sir.

Q. And in the course of that it appeared that there

(Testimony of David W. Dickie.)

had been a misunderstanding among all the parties as to the conditions under which the experiment was to be made and which had prevailed at the time of the collision? A. Yes, sir.

Mr. McCLANAHAN.—May I ask what is the purpose of this examination, Mr. Denman?

Mr. DENMAN.—The purposes of this examination is to show that the testimony has been given under a misapprehension of [1160—1036] fact, and that when the question is put to the experts, as it appears from the testimony of the captain in the record, they do not disagree with his results as to the direction in which the vessel will turn while reversing. And I want to further cross-examine Mr. Dickie for the purpose of bringing out this newly discovered matter.

Mr. McCLANAHAN.—We certainly deny that the evidence of our experts has been given under a misapprehension of the facts.

Mr. DENMAN.—Well, then, that forms an issue.

Q. Mr. Dickie, do you remember my preparing a question at this conference yesterday?

A. Yes, sir.

Q. Have you got the question as I prepared it for you?

A. I left it in the other room, I think; if you will excuse me a moment, I will get it. Now, I have it.

Mr. DENMAN.—You have looked over this question, have you, Mr. McClanahan?

Mr. McCLANAHAN.—I have seen the question.

Mr. DENMAN.—If the “Beaver” is making

(Testimony of David W. Dickie.)

13.572 knots through the water, and without reducing her speed changes her helm to starboard, and after her head under the starboard helm has swung one-half a point to port and the vessel has been steadied, and then her helm has been put hard-a-port, and then her engines are stopped and put full speed astern, would the vessel under this maneuver be swinging rapidly to starboard at the end of one minute or a minute and a half, after her helm had been put hard-a-port?

Mr. McCLANAHAN.—We object to the question upon the ground that it is not surrebuttal; also it appearing from the record that counsel has had an abundance of opportunity on [1161—1037] his cross-examination of this expert, as well as of the others, to have fully and fairly covered the subject. We object, further upon the ground that the hypothesis is not properly stated. And further upon the ground that the question is immaterial, irrelevant and incompetent.

A. The answer to that question is that the ship would be swinging to starboard.

Mr. DENMAN.—Q. Could you say how much she would be swinging?

A. No, sir, that would vary. Supposing that experiment were made three times, and complying with the conditions given in the question, my opinion as an expert is that the result would be different each time in amount.

Q. Quite a considerable difference, possibly?

A. No, not a large difference, but there would be

(Testimony of David W. Dickie.)

a difference each time, a small difference.

Q. How much do you think the difference would be? A. I have not any idea.

Q. And, of course, under different weather and different sea conditions there would be a difference also? A. There would be a difference.

Q. Would you be in a position to deny that she would swing as much as 3 points in a minute and a half?

A. No, I would not be in a position to deny that she would swing 3 points.

Q. Let me put this question to you: The "Beaver" now has her helm wheel put to starboard and she swings half a point to port, then her helm wheel is put hard-to-port and her engines are reversed, and she is making at the time just prior to the reversing of the engines 13.572 knots, what would be the direction of the [1162—1038] swing of the vessel, to port or to starboard?

Mr. McCLANAHAN.—The same objection.

A. I did not follow that question. I would like it read. (Question read by the Reporter.) You used the word "wheel" there, you meant "helm," didn't you?

Mr. DENMAN.—Q. Yes. Now, the "Beaver" has her helm put to starboard, and she swings half a point to port, then her helm is put hard-to-port and her engines are reversed, and she is making at the time just prior to the reversing of the engines 13.572 knots, what would be the direction of the swing of the vessel, to port or to starboard?

(Testimony of David W. Dickie.)

Mr. McCLANAHAN.—The same objection that I made to the previous question, upon the same grounds.

A. There is a period there between 13.572 knots and 10 knots that we have no data for and we would have to depend on the energy delivered with the starboard helm holding the vessel on the port headway until it got down to 10 knots, in which case we think she would continue with the port helm, continue swinging to port.

Q. If, on the other hand, her energy caught her and swung her over to starboard before she got down to 10 knots, your opinion is she would continue to swing to starboard, is it?

Mr. McCLANAHAN.—We make the same objection.

Mr. DENMAN.—Q. So your answer to the question as I put it to you is that she might be going to port or she might be going to starboard, accordingly as the resultant of the forces say in dropping to 10 knots from 13.572, and if the resultant of the forces at that time when she reached 10 knots was swinging to starboard she would swing to starboard and if swinging to port she would swing to port?

A. Yes. [1163—1039]

Mr. McCLANAHAN.—I object to that, further, upon the ground that it is not intelligible.

Mr. DENMAN.—He said “yes” to it.

A. I believe that that would be the case, that the amount of energy given out between $13\frac{3}{4}$ knots, roughly, and 10 knots, would have such an effect on

(Testimony of David W. Dickie.)

the vessel that any effect after that would not be able to overcome the phenomena that was taking place at that time. Now, let me make that clear; the amount of energy given out at 14 knots is, roughly, about double I think of that given out at 10 knots. For example, it takes double the power to drive a ship 10 knots that it does to drive her 8 knots. Oh, it would be more than double at 14 knots.

Q. If that is the case, then, of course you have a greatly increased sucking power of the wheel while she is reversing and throwing the water against the rudder, don't you, at $13\frac{3}{4}$ knots over what it would be at 10 knots?

Q. Yes, but there are three elements that come in there; your backing power of the wheel goes against your rudder; the reversing power of your engine turning your propeller over to the left, which the "Beaver" does when she is backing, gives you a stronger force below pulling the stern of the ship to port than the force above pulling the ship to starboard because your water is under a greater pressure below; and to these you have the force of the ship swinging to port as stated originally in question 15, as given. Now, your ship swinging to port and your water going against your rudder would balance and you would have remaining the force of the greater power of the lower part of your wheel compared with the upper part of [1164—1040] your wheel to swing your vessel to starboard.

Q. Then really there are three forces very difficult of determination, are there not?

(Testimony of David W. Dickie.)

A. Those three forces only come in in question 15 as originally stated. They do not come into the question where the words are used "when the ship was steadied."

Q. If it appeared from the testimony of the helmsman that the vessel was steadied during that time—

A. (Intg.) Then you have only two forces.

Q. And the resultant of those two forces might be that she might very well have turned to starboard?

A. Yes, might very well be that she turned to starboard.

Q. Mr. Dickie, you yesterday prepared and Mr. Derby handed to me, or you handed to me, a set of suggestions for the experiment to-day?

A. Those were prepared by my father and acquiesced in by Mr. Heynemann and myself.

Q. You say: "We suggest that the revolutions be put as near as possible at 70 revolutions, that they give a speed of 13.588 knots, at 11½ per cent, which we think is as close to the truth as can be got under smooth water conditions." That is correct, is it, for the "Beaver" as you understand it? A. Yes.

Mr. DENMAN.—Well, gentlemen, the matter that I hoped to prove by the experiment has been admitted by the experts, and probably would have been admitted had I realized what was in their minds at the time of the giving of the original testimony. So I see no reason for taking the "Beaver" out and attempting the experiment. [1165—1041]

Cross-examination.

Mr. McCLANAHAN.—Q. And why did you come

(Testimony of David W. Dickie.)

to my office yesterday afternoon, Mr. Dickie?

A. I came to your office with the understanding that there was to be an experiment to determine the answer to question 15, to see if the "Beaver" would comply with our answer to question 15.

Q. And you went over to Mr. Denman's office with the understanding that that was to be threshed out, the conditions under which the experiment was to be made?

A. That is what I went over to Mr. Denman's office for.

Q. And you found you were confronted with a new situation? A. Yes, sir.

Mr. McCLANAHAN.—Does the claimant and respondent now close?

Mr. DENMAN.—The people at the Merchants' Exchange promised to have here this morning for us the Lookout at Pt. Lobos, and they so advised me at 8 o'clock last night, although they had some doubts of it earlier in the day. At a quarter to 10 I was advised that he could get nobody to relieve him. It will be necessary for me to subpoena him to bring him here. I can tell you what his testimony will be, or what I understand his testimony will be: it is to the effect that the bar was breaking all day on the 22d, and that his records will so show.

Mr. McCLANAHAN.—Mr. Denman, did you not say to Mr. Derby yesterday afternoon that you were not going to call the man at Pt. Lobos?

Mr. DENMAN.—I said that I thought I would not. [1166—1042]

Mr. McCLANAHAN.—Not that you thought you would not but didn't you say that you were not going to call him?

Mr. DENMAN.—No, I said I thought I would not call him.

Mr. McCLANAHAN.—I object very strenuously to any further continuance of this case. If the Court were here I would appeal to the Court, but we are helpless in the matter and have been helpless all through this long drawn-out trial simply because of the absence of the Court. I object strenuously to any further continuance of this case, especially when the statement shows that the evidence which is now proposed to be injected into the case is not surrebuttal. I have myself a very important case that is pressing for trial and it is not fair to counsel or to the Court or to all interested here that the case should be conducted in this dilatory manner.

Mr. DENMAN.—I do not consider that the case is conducted in a dilatory manner; it is conducted in the manner that is usually followed in the matter of these references. Also that evidence from time to time has been introduced, without objection, on the part of libellant Lie, appearing here by his counsel Hengstler, and has been put in from time to time with his full consent. Is that correct?

Mr. HENGSTLER.—I have not appeared here as counsel for Captain Lie in this proceeding. I think Mr. McClanahan is his counsel in this proceeding.

Mr. DENMAN.—Well, you appear for the persons suing for the cargo, do you not?

Mr. HENGSTLER.—Yes.

Mr. DENMAN.—And you have appeared here during the introduction of this testimony?

Mr. HENGSTLER.—Yes. [1167—1043]

Mr. McCLANAHAN.—Mr. Hengstler, you have not been able to attend all the hearings, have you?

Mr. HENGSTLER.—I think I attended all of them with one exception, when I was not notified of the hearing.

Mr. McCLANAHAN.—Well, what do you say, Mr. Denman? We are at your mercy.

Mr. DENMAN.—I will guarantee to finish my case by 3 o'clock Monday afternoon.

Mr. McCLANAHAN.—It is not fair to me to have this case dragged out in this way.

Mr. DENMAN.—We will not keep you more than 10 minutes in the direct examination and will not take you more than 200 feet from your office.

Mr. McCLANAHAN.—And I object to it, further, on the ground that it is merely cumulative as sur-rebuttal evidence. And from the statement made by Mr. Derby to me, you yourself stated that it was unnecessary to call that lookout.

Mr. DENMAN.—That is hearsay evidence, of course.

Mr. McCLANAHAN.—Well, Mr. Derby is here.

Mr. DENMAN.—But I don't intend to cross-examine Mr. Derby.

Mr. McCLANAHAN.—Well, Mr. Derby is surely to be congratulated on that.

Mr. DENMAN.—It may be that I will not be able to get him here.

Mr. McCLANAHAN.—Well, if you are in doubt as to whether you are going to be able to call your Pt. Lobos Lookout, why can you not close your case now subject to your calling him at a session to convene on Monday afternoon at one o'clock?

Mr. DENMAN.—Well, I will guarantee to close the case by 3 o'clock on Monday.

(An adjournment was here taken until Monday, August 7th, 1911, at one P. M.) [1168—1044]

Monday, August 7th, 1911.

D. W. DICKIE.

At my request I received a copy of the testimony given on Friday, August 4, 1911, in order to see that the answers were as I intended them and I find that on page 1040, the last question asked by Mr. Denman, and as answered by me, the question being:

“Q. If that is the case, then, of course, you have a greatly increased sucking power of the wheel while she is reversing and throwing the water against the rudder, don't you, at $13\frac{3}{4}$ knots over what it would be at 10 knots?”

And the answer:

“A. Yes, but there are three elements that come in there; your backing power of the wheel goes against your rudder; the reversing power of your engine turning your propeller over to the left, which the ‘Beaver’ does when she is backing, gives you a stronger force below pulling the stern of the ship to port than the force

(Testimony of David W. Dickie.)

above pulling the ship to starboard because your water is under a greater pressure below; and to these you have the force of the ship swinging to port as stated originally in question 15, as given."

Now, your ship swinging to port, and the greater power of the lower part of the wheel compared with the upper part of the wheel, would balance, and the water going against your rudder would swing the ship to port as originally stated in the answer to question 15.

Referring to the question asked by Mr. Denman, the last question on page 1037 and the first question on page 1039, I find that they are one and the same question with the exception [1169—1045] of the words "the vessel has been steadied" have been omitted in the last question referred to by me on page 1039, and that the answer to that question should read:

"There is a period there between 13.572 knots and 10 knots that we have no data for and we would have to depend on the energy delivered with the port helm as the action of the starboard helm is cancelled by the port helm, holding the vessel on the starboard headway until it got down to 10 knots, in which case we think it should continue with the port helm,—continue swinging to port."

Now, I may make a statement to the effect that in answering this question it is presupposing that the helm in being put hard-to-port remains there an

(Testimony of David W. Dickie.)

appreciable time. It is possible to suppose a theoretical case in which no time would elapse between the helm being put hard-to-port and the reversing of the engine, but this is not a practical condition and we must suppose that some action takes place due to the helm being put hard-to-port.

Mr. DENMAN.—Your theory is, then,—

Mr. McCLANAHAN.—Now, just a moment. I object to any examination of the witness. Mr. Dickie has not been produced here by anybody. He has simply come here to make this correction.

Mr. DENMAN.—But he has changed his testimony and I am going to examine him upon it.

Mr. McCLANAHAN.—Well, he is your own witness, then.

Mr. DENMAN.—No, he is not, he has been produced here by you.

Mr. McCLANAHAN.—I beg your pardon. He has come here himself to explain his testimony.

[1170—1046]

Mr. DENMAN.—Well, I want to ask him this question anyway: Q. Your theory is that if she were swinging to starboard, when she got to 10 knots she would keep on swinging for sometime afterwards; if she had that starboard momentum when she got there, she would keep on?

A. Yes; that is the theory as stated there.

[Testimony of John Hyslop, for Claimant (in Surrebuttal).]

JOHN HYSLOP, called for the claimant "Beaver" in surrebuttal, sworn.

(Testimony of John Hyslop.)

Mr. DENMAN.—Q. Mr. Hyslop, what is your occupation?

A. Marine Reporter for the Merchants' Exchange.

Q. Where are you stationed? A. Pt. Lobos.

Q. Where is Pt. Lobos; is that one of the southerly points at the entrance to the Bay of San Francisco?

A. Yes, sir, it is just west of Ft. Miley.

Q. Between Ft. Miley and the Cliff House, is it not?

A. No, it is just west of Ft. Miley. The Cliff House is to the south.

Q. It is about half a mile to the Cliff House from there? A. No, about a quarter of a mile.

Q. How long have you been stationed at that place? A. 36 years.

Q. Have you been observing the bar during that time? A. Yes, sir.

Q. Do you recollect the 22d day of November, 1910? A. Yes, sir.

Q. How do you recollect it?

A. Well, most particularly by the two Japanese cruisers coming in; also the rough weather, the rough foggy weather.

Q. Where did you see the Japanese cruisers coming in? [1171—1047]

A. Through the North Channel.

Q. About what time? A. About noon time.

Q. Had you been watching for them?

A. Yes, we knew they were outside, somewhere in the vicinity, by the wireless, before.

Q. Did you see them coming down the channel?

(Testimony of John Hyslop.)

A. No, not for the fog; they were right in the channel when I seen them.

Q. Did you notice anything peculiar about them?

A. Yes, they were rolling heavy; pitching considerable water.

Q. Could you tell from that distance whether their decks were being washed or whether it just came over the bow?

A. I feel confident that there were some seas went over the decks.

Q. How far off was that, do you think?

A. From me?

Q. Yes. A. Three miles.

Q. You might or might not be mistaken as to that?

A. No, I am not mistaken; I feel confident of it.

Q. Let me ask you, how long did the weather continue rough that afternoon?

A. Well, it was thick foggy weather and I could not see but—

Q. (Intg.) How long did the sea continue rough that afternoon? How long did it continue rough? Did it cease that afternoon, or what was the condition of the sea?

A. It was very rough and continued until late on the 23d anyway.

Q. Until late on the 23d anyway; could you see the bar on that afternoon?

A. Not on the 22d, but I could see the bank. The bank was breaking badly. [1172—1048]

Q. The bank was breaking badly?

(Testimony of John Hyslop.)

A. And judging from the surf on the beach the bar would be pretty sure to break.

Q. Let me ask you: Is it possible that the bank at any time that afternoon, as you recollect the condition of the weather was not breaking? A. No.

Q. Did you see the steamer "Arizona" on that day? A. No.

Q. Did you see the steamer—

Mr. McCLANAHAN.—I object to the leading questions.

Mr. DENMAN.—Q. Did you see any other steamers come in or go out on that day? A. No other.

Q. Do you recollect any other steamer attempting to go out that day?

A. Yes, the "Nippon Maru."

Q. What can you say about her, what happened to her?

A. I know that she went out during the afternoon and I know she came back and anchored off the heads after dark. I could see her lights.

Q. Do you know how long she stayed there?

A. All night.

Q. Which way did she go out finally?

A. The North Channel.

Cross-examination.

Mr. McCLANAHAN.—Q. Do you know of your own knowledge the reason the "Nippon Maru" came back after once going out?

A. Yes, because the bar was rough.

Q. Is that your answer?

A. Yes. I answered that question that night.

(Testimony of John Hyslop.)

By the ship coming back I supposed that that was the reason, that she found the bar so heavy that she concluded to come back and wait until daylight, which was afterwards proved was so.

Q. Is not that a supposition on your part—it is not your [1173—1049] knowledge—you supposed she came back because the bar was heavy?

A. That is right.

Q. That is right, you don't know it?

A. I know it now.

Q. But you didn't know it at the time?

A. I didn't know it at the instant I reported it.

Q. You know it now from what somebody has told you?

A. I know it from seeing her go out and seeing her come back, and knowing the bar was rough.

Q. Well, how did you know that that was the reason why she came in after first going out? You just supposed it, didn't you?

A. Yes, I supposed it, and I also had a pretty fair idea from the heavy swell on the beach, which was right close to me.

Q. And you supposed that the heavy swell was what brought the ship back? A. Yes, sir.

Q. When did Mr. Denman first speak to you about this matter of November 22d, 1910? To-day, wasn't it? A. That was the first time, yes, sir.

Q. That was the first time, wasn't it?

A. Yes, sir.

Q. Why did you hesitate about answering the question?

(Testimony of John Hyslop.)

A. Because somebody asked me if I remembered, or asked if I could come in, within this last 2 or 3 days, and there was nothing definite about my coming in until 11 o'clock to-day.

Q. Who was it asked whether you could come in, or not? A. The manager of the Exchange.

Q. He didn't say what you were wanted for?

A. Yes, he said it was something about the "Beaver" and the "Selja."

Q. Is that all he said?

A. That was all. [1174—1050]

Q. You did not know any thing about the "Beaver" and the "Selja," did you?

A. Well, yes, it has been talked about more or less at different times, the suddenness of the "Selja" going down, and so forth. It was in my mind all right.

Q. You have given your reason for remembering November 22d and the condition of the weather on that day as being the fact that two Japanese liners came in; is that correct?

Mr. PAGE.—He said two Japanese cruisers.

Mr. McCLANAHAN.—Two cruisers.

A. Yes, I remember that was on the 22d, and I also remember of the "Beaver" coming back that night.

Q. What was there strange about the "Beaver" coming back that night?

A. It was reported that she had sunk the ship.

Q. It was not reported that night, was it?

A. Yes, sir.

(Testimony of John Hyslop.)

Q. To you?

A. It was reported that night in town.

Q. I say was it reported to you?

A. Not to me—yes, yes, it was reported by telephone to me, and I expected the “Beaver” to come back and I heard her whistle in the fog.

Q. And you knew her fog-whistle, did you?

A. Yes. Knowing she was in the vicinity, yes, sir.

Q. What ships came into this harbor on November 23d?

A. I would have to look at my record to see that.

Q. You didn’t bring the record to the city to-day, did you? A. That is, I would have to see—

Q. (Intg.) Answer my question, please.

A. No, sir. The records are in the Merchants’ Exchange.

Q. You did not have to look at your records to find out about the Japanese cruisers coming in on November 22d, did you? [1175—1051]

A. Well, no, I didn’t have to.

Q. Now, tell me, without looking at your records, the date of some other ship coming into port? You can’t do it, can you? A. No.

Q. Was the fog very thick on the 22d of November? A. Yes, sir.

Q. How far could you see?

A. Sometimes it would lift off a little and you could see across the heads, or about that.

Q. How far is that? A. 3 miles; about 3 miles.

Q. And at other times how far could you see?

(Testimony of John Hyslop.)

A. That day?

Q. Yes. A. On the 22d of November?

Q. Yes. A. That is about as far as I could see.

Q. How far could you see when the fog had not lifted, when the fog was dense and it shut down?

A. I say that it lifted off a little now and then sometimes.

Q. And it was at that time when it lifted that you could see 3 miles? A. Yes, sir.

Q. Now, I want to know how far you could see when it had not lifted, when it was down dense?

A. Not more than half a mile.

Q. Could you see that far?

A. Yes, or about that.

Q. All day long? A. Yes, sir.

Q. How far is Pt. Lobos, where you are stationed, from the main channel? A. A mile and a half.

Q. And these ships came in the main channel, did they not?

A. No, they came in the North Channel.

Q. How far are you from the North Channel?

A. About 3 miles.

Q. And you saw them come in that day?

A. Yes, sir.

Q. They must have come in at a time when the fog had lifted?

A. I just happened to catch them by just a glimpse; I did not see them for more than 2 or 3 minutes. [1176—1052]

Q. And you could tell by a glimpse just what they were? A. Yes, sir.

(Testimony of John Hyslop.)

Q. There was not anything unusual in those vessels coming in that day, was there?

A. It was rough, yes, sir.

Q. Have you never seen the sea rough before?

A. Well, it was odd for them to come down the North Channel. The reason they came in the North Channel is, as I take it, that it was rough and because there is the deepest water in the North Channel.

Q. You don't know anything about their reason for coming in that way, do you?

Mr. DENMAN.—He said he supposed that was the reason.

Mr. McCLANAHAN.—Let the witness handle himself, Mr. Denman.

A. I know that they came to the North Channel for deep water, for the deepest water.

Q. How long have you been in consultation with Mr. Denman about this matter?

A. Not until only just now.

Q. Well, how long just now? For how long a time?

A. How long have I been in this office, do you mean?

Q. I mean how long have you talked with Mr. Denman about this matter?

A. Not more than 10 minutes.

Q. Whereabouts? Where were you?

A. Before we came here—I thought you meant here. I was in his office at about one o'clock.

Q. How long did you talk with him?

(Testimony of John Hyslop.)

A. Not more than 5 minutes.

Q. And then you came here? A. Yes, sir.

Q. Was the North Channel rough on that day?

A. On the 22d?

Q. Yes. A. Yes, sir. [1177—1053]

Q. Could you see it? A. Yes, sir.

Q. You saw it so plainly that you say you think that the Japanese war-ships had their decks washed with water? A. Yes, sir.

Q. In the North Channel? A. Yes, sir.

Q. How far are you from the so-called 'Potato Patch'? A. About 3 miles.

Q. Did you see the Potato Patch that day?

A. Yes, sir.

Q. All day long?

A. No, just about the time that I seen the men-of-war come in.

Q. That is the only time that you saw the Potato Patch that day?

A. No, at different times. It lifted now and then.

Q. Did you ever see it in that condition before?

A. Yes, very often.

Q. Very often? A. Very often.

Q. Do you want to give any time to the question for the refreshing of your memory about other vessels that have come in on stated occasions, giving the date of their arrival here? A. No.

Q. You don't want to try to refresh your memory on that point? Do you mean to say that this 22d of November, when these two vessels came in, is the only occasion you can now think of when other ves-

(Testimony of John Hyslop.)

sels came in, and give the dates of their coming?

A. Only that I have been speaking about these vessels and have had them in my mind; that is all.

Q. And you have them in your mind because of its being a rough day? A. Yes, sir.

Q. And yet you have seen hundreds of such days just as rough?

A. No. It is a very rare matter for two Japanese cruisers to come in. [1178—1054]

Q. How did you know they were Japanese cruisers? I mean at that time, how did you know they were Japanese cruisers?

A. By experience; knowing other vessels from cruisers.

Q. If this was an odd experience, you did not have any other experience by which to judge, did you?

A. Well, these large vessels coming through the North Channel was odd.

Redirect Examination.

Mr. DENMAN.—Q. Do you remember being rung up last week and asked the facts concerning this case? A. Yes, sir.

Q. Over the telephone? A. Yes, sir.

Q. Did you consult your records before coming down here? Did you look over your records?

A. Yes, sir; I looked at the 22d.

Q. Do you recollect what that record shows as to the condition of the bar on that day? A. Yes, sir.

Mr. McCLANAHAN.—I object to that as calling for hearsay evidence. The record speaks for itself. It is the best evidence.

Mr. DENMAN.—Q. What does your record show?

(Testimony of John Hyslop.)

Mr. McCLANAHAN.—The same objection.

A. They show that the bar was rough.

Mr. DENMAN.—Q. Do you remember what day it was you were telephoned to?

A. From your office?

Q. No; you remember you were telephoned to last week by somebody, do you not? A. Yes, sir.

Q. Do you remember what day it was?

A. I think it was Thursday.

Q. Where did that telephone come from, do you recollect? A. The Merchants' Exchange.

Q. Do you recollect of a telephone received on Tuesday of last week from the Merchants' Exchange? [1179—1055]

A. No, not in regard to that.

Q. With regard to the condition of the weather and the sea on the 22d of November? A. Yes.

Q. Do you recollect the telephone received from Captain Kidston? A. Yes, sir.

Q. Do you recollect my clerk calling on you yesterday and getting a copy of your record from you?

A. Yes, sir.

Q. How many stations have you out there for the purpose of observing the bar? A. Two.

Q. Where are they?

A. One is as high as it can be on Pt. Lobos and the other is as near the beach as possible.

Q. When is one used, and when is the other used?

A. The lower one is used in foggy weather and the other one is used most of the time.

Q. In clear weather?

(Testimony of John Hyslop.)

A. In clear weather, yes; clear and fair weather.

Recross-examination.

Mr. McCLANAHAN.—Q. Do you appreciate that I asked you about your prior knowledge of this date, November 22d, and you confined it simply to the conversation with Mr. Denman this morning in this office, and a little while this afternoon in his office, and now on his redirect examination, you have named two or three occasions when you received telephone messages about this matter; what is your explanation of that?

Mr. DENMAN.—I object to the question on the ground that it improperly states the condition of the record. Mr. McClanahan's first question was when he had first talked with me. You did not ask him anything about talking with anybody else, and that is the reason he hesitated so long. [1180—1056]

Mr. McCLANAHAN.—Q. Is that a proper explanation of your attitude?

A. Yes, sir. The first time I met Mr. Denman was within the last two hours.

Q. You did not think then that I was after the truth of the matter?

Mr. DENMAN.—I object to the question upon the ground that he answered accurately the question put to him.

Mr. McCLANAHAN.—Q. You knew I was after information, did you not, as to your knowledge of November 22d?

Mr. DENMAN.—I object to that upon the ground that he answered the question exactly as it was put

(Testimony of William Kidston.)

to him by counsel.

Mr. McCLANAHAN.—Q. And though I confined my question to Mr. Denman, you did not care to tell me about these other conversations that you had had over the telephone with Captain Kidston and others?

Mr. DENMAN.—I object to that on the ground that you did not ask him about the other conversations.

Mr. McCLANAHAN.—Q. Do you care to answer the question or to make any explanation? A. No.

Mr. McCLANAHAN.—We will ask now whether claimant and respondent closes the case.

Mr. DENMAN.—Not yet. Take the stand, Captain Kidston.

[Testimony of William Kidston, for Claimant (Recalled in Surrebuttal).]

WILLIAM KIDSTON, recalled for the claimant “Beaver” in surrebuttal:

Mr. DENMAN.—Q. Captain Kidston, I want to ask you how long it would take you in your vessel, to pick up full speed, going at half speed, if you had full steam in your boilers?

Mr. McCLANAHAN.—I object to the question as not being [1181—1057] surrebuttal.

Mr. DENMAN.—I admit that it is not, but it is pertinent to the case and I am going to ask the privilege of the Court to reopen for this purpose.

Mr. McCLANAHAN.—And I object to it upon the further ground that it is immaterial.

A. I would say about 5 minutes.

Mr. DENMAN.—Q. Captain Kidston, could you

(Testimony of Captain Kidston.)

tell from the middle of the bridge, or within a radius of 10 feet from the center of the bridge of the "Selja" as she has been described here, whether or not the vessel had stopped in the water?

Mr. McCLANAHAN.—I object to that upon the ground that the Captain has shown no knowledge of the "Selja's" bridge, and any answer that he may give to that question is simply a supposition and is of no value; further, that it is not surrebuttal, and immaterial, irrelevant and incompetent.

Mr. DENMAN.—Q. Could you tell, Captain?

A. I could answer that question about by own bridge and about my own ship.

Q. Now, presuming that your own bridge extends from side to side of the ship, could you tell, without going to the side of the vessel, whether or not she stopped in the water?

Mr. McCLANAHAN.—We make the same objection.

A. On the bridge of the "Beaver" standing amidships, I could not tell without going to the end of the bridge or pretty near the end.

Mr. DENMAN.—Q. Could you do it within 5 feet of the center of the vessel? Could you, by moving 5 feet from the center of the vessel, tell whether or not the vessel had been stopped in the water? [1182—1058]

Mr. McCLANAHAN.—We make the same objection. A. No.

Mr. DENMAN.—Q. Do you recollect, Captain Lie meeting you, after your testimony, in the clerk's

(Testimony of Captain Kidston.)

office, regarding the conversations on the bridge?

Mr. McCLANAHAN.—I object to this upon the same ground, that it is not surrebuttal, and also on the further ground that it is evidently calling for some conversation or incident happening between Captain Kidston and Captain Lie and counsel well knows that Captain Lie has left this jurisdiction and is on his way to Norway.

Mr. DENMAN.—This is proper rebuttal.

A. I remember; yes.

Mr. McCLANAHAN.—And on the further ground that counsel assured me that Captain Lie could go without any danger of necessity of recalling him.

Mr. DENMAN.—Q. Do you recollect Captain Lie testifying as to any of that conversation here the other day? A. Yes, sir.

Q. Did that conversation take place?

A. Yes, sir.

Q. Where did it take place?

A. Walking down the sidewalk, after leaving the court.

Q. You and he left the courtroom together?

A. We went down the elevator and out of the building together.

Q. Where did you go?

A. I don't remember how far we walked down Market Street. We walked down until we came to a point where he left me to take a car, I think.

Mr. McCLANAHAN.—Now, we will ask again whether the [1183—1059] claimant and respondent's case is closed.

Mr. DENMAN.—We admit that you have asked this question before and we now ask other counsel if they have any questions to put in behalf of their cases.

Mr. McCLANAHAN.—What other counsel are you referring to?

Mr. DENMAN.—To Brother Hengstler here, who is counsel for a good many.

Mr. HENGSTLER.—I have not any testimony to offer at the present time, but if the case is now closed on the subject of the liability for the collision I want it understood that, of course, it is subject to further testimony to be taken to prove the cargo losses. I suppose that is understood, is it not?

Mr. DENMAN.—It is, so far as we are concerned.

Mr. McCLANAHAN.—Why, certainly. Again I ask, does counsel close the case?

Mr. DENMAN.—It is closed as far as we are concerned.

Mr. McCLANAHAN.—And the case is closed as far as we are concerned.

Testimony closed. [1184—1060]

[Commissioner's Certificate to Testimony.]

United States of America,
State and Northern District of California,
City and County of San Francisco,—ss.

I, James P. Brown, a United States Commissioner for the Northern District of California, do hereby certify that in pursuance of the order of reference to take and report the testimony herein, that on Saturday, June 10th, Monday, June 12th, Wednesday,

June 14th, Thursday, June 15th, Friday, June 16th, Saturday, June 17th, 1911, and Friday, July 21st, Saturday, July 22d, Monday, July 24th, Tuesday, July 25th, Wednesday, July 26th, Friday, July 28th, Saturday, July 29th, Monday, July 31st, 1911, and Tuesday, August 1st, Thursday, August 3d, Friday, August 4th, and Monday, August 7th, 1911, I was attended by Messrs McClanahan & Derby, as proctors for the libelants, Charles Page, Esq., and William Denman, Esq., as proctors for respondent, and L. T. Hengstler, Esq., as proctor for the claimants, and by the witnesses who were of sound mind and lawful age, and that the witnesses were by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that said testimony was taken in shorthand by Edward Lehner and Charles R. Gagan, and afterwards reduced to typewriting.

IN WITNESS WHEREOF, I have hereunto subscribed my hand at my office in the City and County of San Francisco, State of California, this 15 day of September, 1911.

JAS. P. BROWN,

U. S. Commissioner, Northern District of California,
at San Francisco.

[Endorsed]: Filed Dec. 11, 1913. W. B. Maling.
By Lyle S. Morris, Deputy Clerk. [1185—1061]

[Opinion.]

*In the District Court of the United States for the
Northern District of California.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners and Crew of Said Steamship,
Libelant,

vs.

The American Steamship "BEAVER,"
Libelee,

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA,"
Libelant,

vs.

The American Steamship "BEAVER,"
Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
CO., a Corporation,
Claimant.

No. 15,130.

PORTLAND & ASIATIC STEAMSHIP COM-
PANY, a Corporation,
Libelant.

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,
Respondent.

McCLANAHAN & DERBY, of San Francisco, California, Proctors for Libelant.

ANDROS & HENGSTLER, of San Francisco, California, Proctors for Cargo.

WILLIAM DENMAN, and PAGE, McCUTCHEN, KNIGHT & OLNEY, of San Francisco, California, Proctors for Respondent.

R. S. BEAN, District Judge (of District of Oregon, by Assignment).

These are three causes against the steamship "Beaver" consolidated for trial. The main suit is brought by the master of the Norwegian steamship "Selja" on behalf of her owner, officers and crew to recover for the loss of the "Selja," her equipment, and the personal effects of the officers and crew. [1186] The second is brought by way of an intervening libel on behalf of the owners of the cargo. The third is an independent suit *in persona* brought by the charterers of the "Selja" against the owners of the "Beaver" to recover for loss of freight.

At 3:16 o'clock on the afternoon of November 22, 1910, the "Selja" was sunk in a collision with the "Beaver" in a fog off the entrance to San Francisco Harbor, and the only question for decision at this time is the liability for such collision. It is admitted that the "Beaver" was at fault, because she was navigating at an immoderate rate of speed at the time, but it is claimed on her behalf that the "Selja" was also at fault, and, as a consequence, that the damage should be divided. A vast amount of testimony has been taken, elaborate arguments were made

and briefs filed discussing many interesting and important questions of law and fact, with marked ability and learning, but, in my judgment, the point at issue can be decided by the application of the law to facts admitted by the "Selja." The "Selja," in command of Captain Lie, was returning from an Oriental voyage, and at 3 P. M., on November 22, while enveloped in a dense fog a few miles off the entrance to San Francisco Harbor, and while going at a speed of six knots an hour, heard "seemingly dead ahead" a deep, distinct whistle, which the captain first mistook for the fog-whistle at Point Bonita, but which proved to be that of the "Beaver" on her regular voyage from San Francisco to Portland. Without stopping her engines or changing her course or speed, she continued on her course from 3:00 to 3:05 towards the whistle, which was being repeated at intervals of 55 seconds. At 3:05 she put her engines to slow speed, the whistle being repeated at regular intervals [1187] coming "seemingly nearer," but she did not know at that time where the whistle was nor what it signified, nor was its position ascertained except, as the captain says, "as well as could be in a fog." From 3:05 to 3:10 she continued in the direction of the whistle, dropping her speed from 6 knots at 3:05 to $3\frac{1}{2}$ or 4 knots at 3:10. At 3:10 her navigating officer first concluded that the whistle which he had been hearing at intervals of 55 seconds for the past ten minutes was that of an approaching steamer and stopped his engines, allowing the momentum of the vessel to carry her forward. At 3:13 the "Beaver" loomed up out of the fog for a short distance away, and at 3:16 the collision occurred.

Under these admitted facts the "Selja" was, in my opinion, clearly at fault for a violation of the second paragraph of Rule 16, regulating the navigation of vessels at sea (26 St. at L. 326), if not for a failure to maintain that rate of speed in a fog required by the law as laid down in the Belgian King (125 Fed. 869). Rule 16 provides that "a steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines and navigate with caution until the danger of collision is over." The "Selja" heard a whistle apparently forward of her beam at 3:00 o'clock but continued her voyage for five minutes in the direction of the whistle without reducing her speed, and for ten minutes without stopping her engines, notwithstanding she continued to hear five-second automatic blasts of an approaching whistle at 55 second intervals, and without knowing either its position or distance. She thus not only failed to observe the rule on hearing the first [1188] whistle but repeatedly violated it at practically one minute intervals for the succeeding ten minutes. She was apparently navigating under former Article 18 of the Revised International Regulations (23 Stat. 4381), which required a vessel approaching another "so as to involve risk of collision, to slacken her speed or stop or reverse if necessary," and under which it was held that a steamship in a fog was not obliged to stop her engines on hearing the first whistle ahead, unless the proximity be such as to indicate immediate dan-

ger. (The Umbria, 166 U. S. 404-412; The Ludvig Holberg, 157 U. S. 60; The Blue Jacket, 144 U. S. 371.) This rule did not require any specific act to be done or left undone in a given case but only the exercise of good judgment and seamanship, but Rule 18 has been superseded by Rule 16, which imposes a positive duty upon a vessel hearing apparently forward of her beam the fog signal of a vessel, the position of which is not ascertained, to immediately stop her engines and then navigate with caution. It is no longer a question whether the master exercises good judgment in a given case, but his conduct is governed by positive law.

The respondent claims that Rule 16 should be so interpreted that the requirement to stop the engine is not obligatory if the position of the approaching vessel is ascertained "with reference to danger of collision by an approximate of accuracy," but this would leave the law substantially the same as it was prior to the adoption of the rule, and would not accomplish the purpose intended by its enactment. It was designed to take away from a vessel the right to proceed at all, after hearing the first [1189] signal without first stopping the engines to enable those in charge to ascertain the position of the signalling vessel. It recognizes the difficulty of ascertaining from the sound of a whistle the exact position, and especially the course and distance of a vessel in a fog. It therefore does not leave the navigation of a vessel, when a whistle is heard apparently forward of her beam, the position of which is not ascertained, to the master's judgment, but assumes

that the zone of danger of collision is reached when the whistle is heard, and forbids the ship to enter such zone except after stopping its engines to ascertain the position of the on-coming ship. It defines in positive terms the master's duty in such cases. (The *El Monte*, 114 Fed. 796; The *Rondane*, 9 A. S. P. M. C. 108; The *Brittania*, 10 A. S. P. M. C. 67; The *St. Louis*, 98 Fed. 750; The *Admiral Schley*, 142 Fed. 64.) It is said, however, that the first whistle heard by the master of the "*Selja*" sounded a long way off and the apparent distance thereof, as heard by him, showed absolutely no danger of collision prior to 3:10, and therefore the location of the "*Beaver*" was ascertained within the meaning of Rule 16. The same argument was urged in some of the causes above referred to but without effect. As said in "*The Brittania*"; "It is not true that because a whistle sounds distant those on the ship hearing it are entitled to treat it as distant. Many cases in this court have shown that an approaching distant sounding whistle is really close. Again, it is not correct to say that a whistle having been heard can be located so as to ascertain it is at a precise bearing on the bow. . . . If this Court were to hold that upon hearing a whistle which sounded to be distant, a vessel [1190] was justified in not stopping, although its position was not ascertained except that it sounded a long way off, every case in this court would be that the whistle sounded such a long way off that the ship was justified in not stopping." Captain Lie of the "*Selja*" admits that the whistle was nearer than he thought, and the evidence shows

that he was mistaken as to the course and distance of the oncoming vessel. His mistake illustrates the necessity and reason for Rule 16. If, after hearing the whistle he chose to take chances when the law directed him to make sure, his vessel is not exempt from liability on the ground of his unintentional error.

It is also claimed that even if the "Selja" was at fault in not obeying Rule 16, such fault was not a contributing cause to the collision. The law is that where a vessel has committed a positive breach of a statutory duty, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so. (*The Pennsylvania*, 19 Wall. 125-136; *The Ellis*, 152 Fed. 981; *The Davidson vs. American S. B. Co.*, 120 Fed. 250; *The Dauntless*, 121 Fed. 420; *The Admiral Schley*, 142 Fed. 64; *Hawgood Tr. Co. v. Mesaba S. S. Co.*, 166 Fed. 697.) The "Selja" has not sustained this burden. Indeed, it is quite apparent that if she had observed the rule she would not have reached the point of collision at the time she did and the "Beaver" would have passed her. Nor is there room here for the application of the so-called major and minor fault doctrine. Both vessels were equally at fault. The "Beaver" violated the first part of Rule 16 by going at an immoderate rate of speed, and the "Selja" was at fault for failing to observe the latter clause of the rule. One was as great a breach of [1191] duty as the other. The "Beaver" ran into a dense fog a short time before the collision and should, of course, have slackened her speed. She did

not hear the "Selja's" whistle until about 3:13 and upon hearing it immediately reversed her engines full speed astern, but it was then too late to avoid the collision. The "Selja" was in the fog at 3:00 P. M. and had been for some time prior. She heard the "Beaver" whistle at 3:00 o'clock and continuously from that time until the collision, and yet she did not slacken her speed for five minutes after hearing the first whistle nor stop her engines until ten minutes thereafter. She apparently acted on the theory that it was not necessary to stop her engines until the repeated whistle of the on-coming steamer had unmistakably shown her that danger of collision was imminent if not unavoidable.

The Court cannot say, under these circumstances, that the fault of the "Beaver" was so grievous that the fault of the "Selja" should not be taken into account. The importance of enforcing the law as embodied in Rule 16 compels me to adjudge both vessels at fault.

Findings and judgment may be prepared accordingly for the signature of either the presiding Judge of the court or myself, as counsel may prefer.

R. S. BEAN,
Judge.

Dated the 24th day of June, 1912.

[Endorsed]: Filed June 26, 1912. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [1192]

*In the District Court of the United States in and for
the Northern District of California.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
“SELJA,” on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship “BEAVER,” Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL.

No. 15,099.

AND

OLAF LIE, Master of the Norwegian Steamship
“SELJA,” etc.,

Libelant,

vs.

The American Steamship “BEAVER,” Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

No. 15,130.

AND

PORTLAND & ASIATIC STEAMSHIP COM-
PANY, a Corporation,

Libellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Interlocutory Decree. [1193]

The above causes having been consolidated for trial and thereafter having come duly and regularly on to be heard before the Court, and evidence having been adduced and the causes submitted, and thereafter, to wit, on the 26th day of June, 1912, an opinion having been rendered and filed holding both of the vessels involved herein in fault for the collision forming the subject matter of the above suits; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. That the collision mentioned in the pleadings herein was due to the fault on the part of both the steamship "Beaver" and the steamship "Selja," and that damages be awarded accordingly.

2. That libellant, Olaf Lie, in the original libel in case No. 15,099, do have and recover from the steamship "Beaver," on behalf of the officers and crew of the "Selja," not including himself, the full damages suffered by said officers and crew for the

causes in his libel mentioned, subject to no offset of any kind.

3. That the right of the libelant, Olaf Lie, in the original libel in case No. 15,099, to have and recover on behalf of his wife and children the damages suffered by them for loss of personal effects, be left for adjudication till the final decree herein, since further evidence bearing on this right may be adduced before the commissioner.

4. That the libelant, Olaf Lie, in the libel in intervention in case No. 15,099, do have and recover from the steamship "Beaver," on behalf of the owners and underwriters of the cargo of the steamship "Selja," the full damages suffered by them for the causes in said libel mentioned, subject to no offset of any kind. [1194]

5. That the right of the Portland & Asiatic Steamship Company, libelant in case No. 15,130, to recover the damages suffered by it for the causes in its libel and the amendments thereto therein mentioned, be left for adjudication till the final decree herein, since further evidence bearing on this right may be adduced before the commissioner.

6. That as regards the damages suffered by the owners of the steamship "Selja," and by the libelant, Olaf Lie, individually from the causes in the original libel in case No. 15,099 mentioned, and the damages suffered by the steamship "Beaver" from the causes in its answer to said libel mentioned, it is ordered that both vessels being in fault, such damages be apportioned under the usual rule of cross-liabili-

ties, and that, if any balance be found due from the steamship "Beaver" to said libelant, Olaf Lie, individually and also on behalf of the owners of said steamship "Selja," there be deducted therefrom one-half of all damages awarded under clauses 2, 3, 4 and 5 of this decree, and that, if no balance be then due, no damages be recovered by said libelant for himself individually or for the owners of said steamship "Selja," but that, if any balance be found due, said libelant have and recover said balance from said steamship "Beaver" for himself and the owners of said "Selja" in proportion to the respective amounts of their claims.

7. That the costs to date be divided between the libelant, Olaf Lie, in the original libel in case No. 15,099, and the San Francisco & Portland Steamship Company, claimant in case No. 15,099, and respondent in case No. 15,130.

8. That the above causes be and the same hereby are referred to James P. Brown, United States Commissioner for the Northern District of California, to ascertain and compute the damages sustained by the respective libelants herein, and those [1195] represented by them, and by the steamship "Beaver" by reason of said collision, and to apportion the same in accordance with the provisions of this decree, and to report said damages and apportionment together with all the evidence produced before him on this reference to the above-named court.

San Francisco & Portland Steamship Co. 1403

Dated at San Francisco, California, this 31st day of August, 1912.

R. S. BEAN,

District Judge of the Northern District of California by Assignment.

Approved as to form.

McCLANAHAN & DERBY,

Proctors for Libelant in Original Libel in Case #15,099, and for Libelant in Case #15,130.

LOUIS T. HENGSTLER,

Proctor for Olaf Lie as Intervening Libelant in Case #15,099.

PAGE, McCUTCHEN, KNIGHT & OLNEY,

Proctors for Claimant in Case #15,099 and for Respondent in Case #15,130.

[Endorsed]: Filed Sept. 2, 1912. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk. [1196]

[Stipulation as to Parties Interested in the Cargo of "Selja," and Amounts of Damages Suffered, etc.]

In the District Court of the United States, in and for the Northern District of California, First Division.

IN ADMIRALTY—No. 15,099.

OLAF LIE, Master of the Norwegian Steamship "SELJA," on Behalf of the Owners and Underwriters of Her Cargo,

Intervening Libelant,

vs.

The American Steamship "BEAVER," Her Engines, Boilers, Tackle, Apparel, Furniture, Boats and Appurtenances,

Libelee.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties to the original suit herein No. 15,099, and the parties to the above-entitled suit in intervention, No. 15,099, and the parties to the suit of Portland and Asiatic Steamship Company vs. San Francisco & Portland Steamship Company, No. 15,130, that the parties interested in the cargo of the Norwegian Steamship "Selja," and referred to in said libel of intervention, and on whose behalf Olaf Lie, as bailee, filed the said libel of intervention, are the owners and underwriters hereinafter mentioned, and that the respective amounts of damages suffered by each of said owners or underwriters of cargo, on said 22d day of November, 1910, are the sums hereinafter respectively set opposite the name of each owner or underwriter in figures, to wit: [1197]

Name of Owner or Underwriter.	Amount of Damage.
Allianz Ins. Co. of Berlin.....	\$ 7610.91
Atlantic Mutual Ins. Co.....	3704.81
British Dominion Marine Ins. Co.....	5093.31
British & Foreign Marine Ins. Co.....	14768.02
Canton Ins. Office.....	999.87
Commercial Union Assurance Co.....	4294.86
Chubb & Son.....	21772.89
Dale & Co., Ltd.....	323.32
Fireman's Fund Ins. Co.....	7669.83

San Francisco & Portland Steamship Co. 1405

Name of Owner or Underwriter.	Amount of Damage.
Hellmann Bros. & Co.....	184.36
Higgins & Cox.....	26068.67
Imperial Mar. Transit and Fire Ins. Co...	11438.13
Iwakami & Co.....	9663.85
Insurance Co. of North America.....	2028.00
Kobe Mar. Transp. & Fire Ins. Co.....	1272.15
Lloyds London	2656.91
Lloyds United States.....	1081.69
London Assurance Corporation.....	425.55
London-Provincial Mar. & Gen. Ins. Co...	1477.11
Mannheim Ins. Co.....	9389.65
New Zealand Ins. Co.....	2064.81
North China Ins. Co.....	14498.36
Ocean Marine Ins. Co.....	604.92
Samuel Bird, Jr. & Co.....	2428.00
South British Ins. Co.....	114.98
Standard Mar. Ins. Co.....	1269.59
St. Paul Fire & Mar. Ins. Co.....	257.56
Thames & Mersey.....	12178.72
Switzerland Marine Ins. Co.....	9415.89
Tokio Marine Ins Co.....	42710.85
Union Marine Ins. Co. of Liverpool.....	1582.38
[1198]	
Union Ins. Co. of Canton.....	15488.90
Western Assurance Co. of Toronto.....	3193.64
Yang-Tsze Ins. Co.....	12333.83
Yokohama Ins. Co.....	10278.09

AND IT IS FURTHER STIPULATED that the sum of all the said damages suffered by the parties in said libel of intervention mentioned, and on whose behalf said libelant Olaf Lie, as bailee, filed his said

libel of intervention, is the sum of Two Hundred and Sixty Thousand Three Hundred and Forty-four and 41/100 Dollars (\$260,344.41).

PROVIDED, However, and upon the distinct understanding and agreement that, in the event of the institution of subsequent proceedings for limitation of liability, it shall be open to any of the parties hereto to allege and prove (if it be a fact, and if that fact be legally relevant and material) that a settlement was made by the owners or underwriters of the steamship "Beaver," or on their behalf, with the aforesaid owners or underwriters of the cargo of the steamship "Selja" or persons representing them by subrogation or otherwise for lesser sums than those herein mentioned, and no decree made or entered herein shall be deemed *res adjudicata* in such subsequent proceedings for limitation of liability on the question as to whether such settlement was made, and as to whether the amount to which liability is to be limited is or is not to be thereby reduced; it being further understood that this stipulation is made without admission, by any of the parties hereto, that either of the questions above mentioned, to wit: "as to whether such alleged settlement was made, or as to whether the amount to which liability is to be limited is or is not to be thereby reduced," is legally either relevant or material or competent; [1199]

PROVIDED, FURTHER, however, that this stipulation shall be conclusive in such limitation proceedings as to the actual value of the cargo lost in the collision herein.

Dated: San Francisco, Cal., May 20, 1913.

McCLANAHAN & DERBY,

Proctors for Libelant in Original Libel No. 15,099.

McCUTCHEN, OLNEY & WILLARD,

WILLIAM DENMAN,

Proctors for Claimant in Original Libel No. 15,099.

LOUIS T. HENGSTLER,

Proctors for Libelant in Libel of Intervention No.
15,099.

McCUTCHEN, OLNEY & WILLARD,

WILLIAM DENMAN,

Proctors for Claimant in Libel of Interventon No.
15,099.

McCLANAHAN & DERBY,

Proctors for Libelant in Libel No. 15,130.

McCUTCHEN, OLNEY & WILLARD,

WILLIAM DENMAN,

Proctors for Respondent in Libel No. 15,130.

[Endorsed]: Filed May 31, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1200]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steam-
ship,

Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL.

No. 15,099.

AND

OLAF LIE, Master of the Norwegian Steamship
"SELJA," etc.,

Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

No. 15,130.

AND

PORTLAND & ASIATIC STEAMSHIP COM-
PANY, a Corporation,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Stipulation as to Damages and Facts.

IT IS HEREBY STIPULATED AND AGREED by and between the [1201] parties hereto that the following damages are admitted to have been suffered by the parties represented by Olaf Lie, master of the steamship "Selja," in his original libel herein in Case No. 15,099, by the Portland & Asiatic Steamship Co., libelant in Case No. 15,130, and by the claimant in Case No. 15,099:

1. By the officers and crew of the steamship "Selja" referred to in clause 2 of the Interlocutory Decree herein:

Alfred Halvorsen, 1st officer	\$643.50
Alfred Larsen, 2d officer	372.00
Arvid Bjorn, 3d officer	249.90
Rambek Eggen, chief engineer	458.28
Axel Andersen, 2d engineer	349.30
Pedar Hansen, 3d engineer	292.50
Wong Hai, steward	791.10
Choi Hoy, carpenter	284.75

2. By Olaf Lie, master of the steamship "Selja,"
\$1,973.23.

3. By Wilhelm Jebsen, owner of the steamship "Selja" as follows:

a.	Value of the steamship "Selja," exclusive of the items hereinafter enumerated	\$171,000.00
b.	Spare gear of said "Selja".....	3,056.00
c.	Engine-room stores of said "Selja"	951.51
d.	Deck-room stores " " "	950.63
e.	Provisions for Chinese crew of said "Selja"	261.45
f.	Cost of keeping Chinese crew in San Francisco pending their return to China	160.63
g.	Cost of returning said Chinese crew to China	1,771.20
h.	Cost of Maritime Declaration made by the master of the "Selja".....	43.00

As to items "f," "g" and "h" claimant simply admits that such damages were suffered, but not that they are recoverable.

It is also stipulated that the cost of operating and maintaining the "Selja" under the charter-party hereinafter referred [1202] to amounted to the sum of two thousand, six hundred and eighty (2,680) dollars per month, and that her charter hire amounted to the sum of five thousand, three hundred forty-six (5,346) dollars per month, and that it would have taken her eight days to have completed the voyage which she was then pursuing and to have discharged her cargo.

4. By the Portland & Asiatic Steamship Company, charterer of the steamship "Selja," libellant

in Case No. 15,130. The amount of the damages suffered by this libelant are not admitted but the following facts are to be taken as true:

a. That the charter under which said "Selja" was proceeding was in the form of the instrument hereunto annexed marked Exhibit "A."

b. That at the time of the collision herein said libelant had paid the semi-monthly charter hire of said vessel from November 16, 1910, to December 1, 1910, amounting to two thousand five hundred ninety-six and 2/100 (2,596.02) dollars, of which there was later returned to libelant the sum of one thousand five hundred seventeen and 36/100 (1,517.36) dollars, being the charter hire from November 22, 1910, to December 1, 1910.

c. That it would have taken the "Selja" four days from said November 22, 1910, to have arrived at San Francisco and to have discharged the 3365 tons of cargo destined for that port, and four more days to have arrived at Portland and to have discharged the 693 tons of cargo destined for that port.
[1203]

d. That coal would have been consumed in the following amounts and at the following prices to complete the voyage:

Would have consumed to have

arrived at San Francisco.. 4 tons 25 miles

Would have consumed during

four days in port in San

Francisco 20 tons

Would have consumed to have

arrived in Portland..... 111.8 tons 660 miles

Would have consumed during

one day in Portland..... 5. tons

140.8 tons at \$2.565 equals.... \$360.75

e. That the following additional charges would have been incurred before delivery of the cargo:

Cost of discharging 3365 tons

at San Francisco, at 25¢.... \$841.25

Cost of discharging 693 tons at

Portland, at \$.435..... 301.45 \$1142.70

Port charges pilotage San

Francisco. \$118.66

Port charges pilotage Port-

land. 115.00

Dockage at San Francisco. 115.80

Tonnage dues at San Fran-

cisco. 268.24 617.70

\$1760.40

f. That the total collectible freight on the cargo was fourteen thousand, eighty-eight and 36/100 (14,088.36) dollars, and the total prepaid freight was five thousand two hundred eighty-nine and 70/100 (5289.70) dollars.

g. That the prepaid freight was on 1036½ tons to San Francisco and 77 tons to Portland.

h. That the cost of discharging the collectible [1204] freight alone as distinguished from the prepaid freight would be as follows:

Cost of discharging 2329½ tons

at San Francisco, at \$.25.... \$582.38

Cost of discharging 616 tons at

Portland, at \$.435..... 267.96 \$850.34

i. That the value of the bunker coal owned by libelant and lost in the collision was \$3,011.05, and of the other articles also lost, as enumerated in the amendment to the libel, was \$208.00.

5. That the damages suffered by reason of the collision herein by the owners of the steamship "Beaver" and subject to be offset as provided in clause 6 of the Interlocutory Decree herein, amount to the sum of thirty-one thousand eight hundred twenty-nine and 18/100 (31,829.18) dollars, made up of the following items:

Demurrage, Nov. 22d to Dec. 7th, 1910..	\$5,713.66
Repairs	15,017.64
Cleaning and painting.....	329.75
Paint.	391.25
Drydockage.....	4,785.00
Time-keepers	170.00
Surveys:	
Gardener.....	212.00
American Bureau of Shipping....	105.00
Launch Hire.....	10.00
Towage—S. F. & P. S. S. Co.	170.00
S. & M. T. B. Co.	100.00
Dockage..	70.10
Discharging cargo	831.15
Loading cargo	1,116.40
Engine-room stores used during repairs.	396.20
Wages and provisions during repairs...	1,340.63
Wages and provisions for one day	

(would have been expended if cargo had not been forwarded).....	172.00
General average expenses	898.40
	<hr/>
Total,	\$31,829.18

[1205]

6. All of the foregoing damages of all of said parties are exclusive of interest and interest may be claimed on said damages by all parties.

7. It is further stipulated and agreed that none of the aforesaid statements of damage is exclusive, and that other damages may be claimed by any of the parties hereto (if warranted by the pleadings) on the evidence adduced herein, or the facts hereby agreed upon, the purpose of this stipulation being to agree on such damages and such facts as can now be agreed upon without the necessity of making proof of the same.

8. All statements as to damages herein made shall be conclusive in any subsequent proceedings for limitation of liability, but it is not admitted that the claimant in Case No. 15,099 would be entitled to deduct all its aforesaid damages in such limitation proceedings.

Dated: July 18, 1913.

McCLANAHAN & DERBY,
Proctors for Original Libellant in Case No. 15,099,
and Libellant in Case No. 15,130.

WILLIAM DENMAN,
DENMAN and ARNOLD,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant in Case No. 15,099, and for
Respondent in Case No. 15,130.

ANDROS & HENGSTLER,
LOUIS T. HENGSTLER,

Proctors for Intervening Libellant, in Case No.
15,099. [1206]

**Exhibit "A" [to Stipulation as to Damages and
Facts—Time Charter-party].**

GEO. HELLIESEN,
Ship & Steamship Broker,
Maritime Building,
8 and 10 Bridge St.,
New York.

TIME CHARTER-PARTY.

THIS CHARTER PARTY, made and concluded upon in the City of New York, the first day of February, 1909, between Messrs. Kjaer & Isdahl, as agents for owners of the good Steel Screw Steamship "SELJA" of Bergen of 4459 tons gross register, and 2789 tons net register having engines of 360 nominal horse-power, provided with proper certificate for hull and machinery, and classed 100 A. 1. at British Lloyds and The Portland & Asiatic Steamship Co., Charterers of the City of Portland, Oregon,

WITNESSETH, that the said owners agree to let and the said charterers agree to hire the said steamship from the time of delivery, for a period of about three (3) years. Steamer to be placed at the disposal of the charterers, at Hong Kong, China in such dock or at such wharf or place (where she may always safely lie afloat, at all times of the tide), as the Charterers may direct, and being, on her delivery ready to receive cargo, and tight, staunch, strong and

in every way fitted for the service, including dunnage as may be on board, having water ballast, steam winches and donkey boiler, (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), and to be so maintained during the continuation of this Charter-party; to be employed in carrying lawful merchandise, live-stock under and/or on deck including petroleum or its products, in cases, and passengers so far as accommodations will allow in such lawful trades, between safe port and/or ports in British North America and/or United States of America, and/or West Indies, and/or Central America, and/or Carribean Sea, and/or Gulf of Mexico, and/or South America, and/or Europe, and/or Africa, and/or Asia, and/or Australia, excluding River St. Lawrence from October 1st, to May 1st, (White Sea, Black Sea and the Baltic out of season), Magdalena River, and all unsafe ports; and excluding Alaska altogether, as the Charterers or their Agents shall direct, on the following conditions:

1. That the owners shall provide and pay for all provisions, wages and Consular shipping and discharging fees of the Captain, Officers, Engineers, Firemen and Crew, and all other Norwegian fees and consular charges of every description, shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and maintain her in a thoroughly efficient state, in hull and machinery for and during the service. [1207]

2. That the Charterers shall provide and pay for all the Coals, Fuel, Port Charges, Pilotages, Agen-

cies, Commissions, Consular Charges (except those above stated) and all other charges whatsoever except those before stated.

3. That the Charterers shall accept and pay at once on delivery of Steamer for all Coal in the Steamer's Bunkers on delivery, and the Owners shall, on expiration of this Charter-party, pay for all Coal left in the Bunkers, each at the current market prices at the respective Ports where she is delivered to them.

4. That the Charterers shall pay for the use and hire of said Vessel £1100—say Eleven Hundred Pounds British Sterling, per Calendar Month, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a month; hire to continue until her delivery, with clean holds to the owners (unless lost) at a United States Pacific port or British North American port in the Pacific or at a port in China or Japan, port at charterer's option.

5. That should the steamer be on her voyage towards port of return delivery at the time a payment of hire becomes due, said payment shall be made for such a length of time, as the Owners or their Agents and Charterers, or their Agents may agree upon as the estimated time necessary to complete the voyage, and when the Steamer is delivered to the Owners' agents any difference shall be refunded by steamer or paid by Charterers, as the case may require.

6. Payment of said hire to be made in cash semi-monthly in advance in New York at the current rate

of exchange for approved bankers demand bills on London in U. S. Gold or its equivalent, and in default of such payment or payments as herein specified, the Owners shall have the faculty of withdrawing the said steamer from the service of the Charterers, without prejudice to any claim, they, the Owners, may otherwise have on the Charterers, in pursuance of this Charter.

7. Any expense to suit U. S. Passenger Inspection to be borne by Charterers. Charterers to pay for victualling passengers at the rate of 5/Br. Sterling per day for first-class passengers, 2/6 for second class passengers and 1/3 for laborers or steerage passengers.

8. The cargo or cargoes to be laden and/or discharged in any dock, or at any wharf or place that the Charterers or their agents may direct, provided the steamer can always safely lie afloat at any time of tide.

9. That the whole reach of the vessel's holds, deck and usual places of loading, and accommodation of the ship (not more than she can reasonable stow or carry) shall be at the Charterer's disposal, reserving only proper and sufficient space for ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. [1208]

10. That the Captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance with ship's crew, tackle, and boats. That the Captain and officers (although appointed by the Owners) shall be solely under the jurisdiction and orders and direction of the Charterers as re-

gards employment, agency or other arrangements, and they must faithfully carry out all orders of the Charterers in regard to the handling of cargo as though they received these instructions from the Owners; and the Charterers hereby agree to indemnify the Owners from all consequences or liabilities that may arise from the Captain signing Bills of Lading, or otherwise complying with the same.

11. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and if necessary, make a change in the appointments.

12. That the Charterers shall have permission to appoint a super-cargo who shall accompany the steamer and see that voyages are prosecuted with the utmost dispatch. He is to be furnished, free of charge, with first-class accommodations, and same fare as provided for Captain's table.

13. That the master shall be furnished, from time to time, with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages which are to be patent to Charterers or their agents, and to furnish the Charterers, their Agent or super-cargo, when required, a true daily copy of Log, showing the course of the steamer and distance run, and the consumption of Coal and to take every advantage of Wind by using the Sails with a view to economize the expenditure of Coal.

14. That the Master shall use all diligence in caring for the ventilation of the cargo.

15. That in the event of the loss of time from deficiency of men or stores, breakdown of machinery, stranding, fire or damage preventing the working of the vessel for more than twenty-four running hours, the payment of the hire shall cease until she be again in an efficient state to resume her service; but should she in consequence put in to any port, other than that to which she is bound, the Port Charges and Pilotages at such Port shall be bourne by the Steamer's Owners, but should the vessel be driven into Port, or to anchorage by stress of weather, or from any accident to the cargo, such detention or loss of time shall be at the Charterers' risk and expense.

16. That should the vessel be lost, freight paid in advance not earned (reckoning from the date of her last being heard of) shall be returned to the Charterers.

17. The act of God, enemies, fire, restraint of princes, rulers and people and all dangers and accidents of the seas, rivers, machinery, boilers, and steam navigation, and errors of navigation, throughout this Charter Party, always mutually excepted.
[1209]

18. That should any dispute arise between the Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of Court.

19. That the Owners shall have a lien upon all

cargoes, and all sub-freights, for any amounts due under this Charter, and the Charterers to have a lien on the Ship, for all moneys paid in advance and not earned.

20.

21. That as the steamer may be from time to time employed in tropical waters during the term of this Charter, steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, but at least once in every six months, and payment of the hire to be suspended until she is again in proper state of service.

22. That the Owners are to provide ropes, falls, slings and blocks, necessary to handle ordinary cargo up to three tons (of 2240 lbs. each) in weight, also lanterns for night work.

23. Steamer to work night and day if required by Charterers, and all steam winches to be at Charterers' disposal during loading and discharging, and steamer to provide men to work same both day and night as required, Charterers agreeing to pay extra expense if any incurred by reason of night work, at the current local rate.

24. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit. General average, if any, to be according to York-Antwerp Rules 1890.

25. That the Charterers shall have the liberty of subletting the steamer, if required by them, but Charterers remaining responsible.

26. That if required by Charterers, time not to commence before May first next, and should steamer

not be ready for delivery at port of delivery on or before May 31st, 1909, Charterers or their Agents to have the option of cancelling this Charter, at any time not later than the day of steamer's readiness.

27. It is also mutually agreed, that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc."

28. A freight brokerage of $2\frac{1}{2}$ per cent. is due to charterers and a commission of $2\frac{1}{2}$ per cent on the estimated amount of Freight is due and payable by Owners, on *signment* [1210] hereof to GEO. HELLIESEN and KJAER & ISDAHL for division between them. Ship lost or not lost, as also on any extension or renewal of this Charter or purchase of vessel.

29. Penalty for non-performance of this Contract, estimated amount of damages.

30. In case Asiatic crews are employed for account of the Owners, then all additional charges which may result through carrying such crews must be met by the owners, both in the United States and in the Orient or elsewhere.

By cable authority from Messrs. Kjaer & Isdahl, dated at Bergen, February 1st, 1909.

(Sgd.) G. HELLIESEN,

Agent.

(Sgd.) R. P. SCHWERIN,

Vice-Pres. & Gen. Mgr. Portland & Asiatic Steamship Co.

I HERBY CERTIFY the above to be a true copy of the original Charter-party in my possession.

(Sgd.) GEO. HELLIESEN,

(Sgd.) (Illegible.)

Charterers to pay owners £250.—say Two Hundred and Fifty Pounds British Sterling extra for every voyage to Nicolaievsk or north of Nicolaievsk.

[Endorsed]: Filed Aug. 29, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1211]

Stipulation [for Submission of Undetermined Questions, etc.]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
“SELJA,” on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship “BEAVER,” Her Engines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL.

No. 15,099.

AND

OLAF LIE, Master of the Norwegian Steamship
"SELJA," etc.,

Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

No. 15,130.

AND

PORTLAND & ASIATIC STEAMSHIP COM-
PANY, a Corporation,

Libelant.

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Stipulation.

WHEREAS, all questions heretofore arising in the above causes have been heard and determined by Honorable Robert S. Bean, Judge of the United States District Court for the District of Oregon, acting by assignment as Judge for the United States [1212] District Court for the Northern District of California; and

WHEREAS, the interlocutory decree in said causes signed by said Honorable Robert S. Bean provided for a reference to a Commissioner to ascertain and report on the damages sustained by the various parties herein; and

WHEREAS, since the entry of said interlocutory decree the parties hereto have stipulated on the amount of damages suffered or on all facts from which the amount of such damages can be determined, and only questions of law remain for determination, thus rendering any reference unnecessary; and

WHEREAS, it is the desire of all the parties hereto that the questions remaining for decision herein should be determined by said Judge Bean, and that he should sign the final decrees in the above causes and said Judge Bean has consented so to do; now therefore,

IT IS HEREBY STIPULATED AND AGREED by and between the parties that no reference of the above causes be had and that the same may be submitted to said Judge Bean for decision of all questions remaining to be determined in said causes, and that said Judge Bean may make and render the final decrees in said causes; and

IT IS FURTHER STIPULATED AND AGREED by and between the parties that said causes be submitted to said Judge Bean on briefs, the respective libelants to transmit their respective briefs to said Judge Bean within ten days from the filing of this stipulation; the respective claimants and respondents to transmit their briefs within ten

days after service on them of said briefs of the libelants, and said libelants to have five days thereafter to reply to said briefs last named.

Dated: September 11, 1913.

McCLANAHAN & DERBY,
Proctors for Original Libelant in Case No. 15,099,
and Libelant in Case No. 15,130. [1213]

McCUTCHEN, OLNEY & WILLARD,
WM. DENMAN,
Proctors for Claimant in Case No. 15,099, and for
Respondent in Case No. 15,130.

ANDROS & HENGSTLER,
Proctors for Intervening Libelant in Case No.
15,099.

**Order [Approving Stipulation for Submission of
Undetermined Questions].**

The foregoing stipulation is hereby proved, and it is ordered that the above causes be submitted in accordance therewith.

Dated: September 11, 1913.

M. T. DOOLING,
Judge of the United States District Court for the
Northern District of California.

Order [Designating U. S. District Judge].

Honorable Robert S. Bean, United States District Judge for the Northern District of Oregon, is hereby designated as Judge of the United States District Court for the Northern District of California for the purpose of deciding the above causes in accordance

with the above stipulation and making the final decrees therein.

Dated: September 20, 1913.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: Filed Sep. 22, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1214]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steam-
ship,

Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

CONSOLIDATED FOR TRIAL.

No. 15,099.

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gines, etc.,

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SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

No. 15,130.

AND

PORTLAND & ASIATIC STEAMSHIP COM-
PANY, a Corporation,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Memorandum Opinion on Final Hearing.

MEMORANDUM BY BEAN, District Judge, on
Final Hearing.

By the interlocutory decree it is adjudged that both the "Beaver" and the "Selja" were in fault and that damages [1215] should be awarded accordingly; that the "Selja's" cargo owners and her officers and crew, except her master, are entitled to their

damages in full, subject to no offset whatever; that the damages of the owner of the "Selja" and her master and that of the "Beaver" should be apportioned under the usual rule of cross-liabilities and subject to the offsets specified in clause 6 of the interlocutory decree; that the rights of the Portland & Asiatic Steamship Company, the charterer of the "Selja" and libellant in case No. 15,130, to recover damages be left for adjudication until the final decree. The cause was thereupon referred to a commissioner to ascertain and compute the damages sustained by the respective parties. Thereafter stipulations were entered into fixing the amount of damages or settling the facts from which in conjunction with the record, such damages can be computed as a matter of law, and the cause has been by agreement of parties submitted on such stipulations and briefs for final decision without reference to a commissioner.

From the stipulations of facts and admissions made in the briefs filed I find the damages suffered by the respective parties to be as follows:

1. Cargo owners.....	\$260,344.41
2. Officers and crew of "Selja":.....	
Alfred Halvorsen, 1st officer.	\$643.50
Alfred Larsen, 2d officer....	372.00
Arvid Bjorn, 3d officer.....	249.90
Rambek Eggen, chief engi-	
neer.....	458.28
Axel Andersen, 2d engineer.	349.30
Pedar Hansen, 3d engineer..	292.50
Wong Hai, steward.....	791.10

Choi Hoy, carpenter..... 284.75

3. Damages of Olaf Lie, Master of the
 "Selja".....\$1,973.23

[1216]

4. Damages of Wilhelm Jebsen, owner
 of the "Selja":

Value of the "Selja" exclusive of the
 items hereinafter mentioned.....\$171,000.00

Spare gear of the "Selja"..... 3,056.00

Engine-room stores of "Selja"..... 951.51

Deck-room stores of "Selja"..... 950.63

Provisions for Chinese crew of
 "Selja"..... 261.45

Cost of keeping Chinese crew in San
 Francisco, pending their return to
 China..... 160.63

Cost of returning Chinese crew to
 China..... 1,771.20

Cost of Maritime Declaration made
 by the master of the "Selja"..... 43.00

5. Damages to the "Beaver"..... 31,829.18

6. Damages of the Portland & Asiatic
 Steamship Company, Charterer of
 the "Selja":

For loss of pending freight.....\$10,742.21

Bunker coal, flour slings, etc..... 3,209.05

It is admitted that these several amounts should bear interest at 6 per cent per annum from November 21, 1910, the date of the collision, to the final decree, and that the cargo owners and the officers and crew of the "Selja," other than the master, are entitled to a judgment against the "Beaver" for their

full damages without offset; that the damages of the owner and master of the "Selja" and of the "Beaver" be apportioned and subject to the offsets as provided in clause 6 of the interlocutory decree.

The only controverted question is whether the Portland & Asiatic Steamship Company, charterer of the "Selja," is entitled to recover in full for the loss of bill of lading freight, bunker coal, etc., or whether it stands in the same relation to the ship as the owner, and its damages should be awarded accordingly.

For the libellant it is contended that since the [1217] charter was a time charter and not a demise of the vessel, the charterer is to be regarded and treated as an innocent party to the cause of the collision and entitled to the same remedies as the cargo owners or the crew. While the position of the San Francisco & Portland Steamship Company, the claimant of the "Beaver," is that the "Selja" was the agency or instrumentality of the charterer in earning the bill of lading freight, and that her negligence affected its right to such freights, the same as it does the owner's right to the charter hire.

The question seems to be one of first impression as no authorities directly in point have been cited on either side. In my judgment the weight of the argument is with the libellant. The charterer was a mere contract of affreightment, the vessel remaining in the possession, control and command of the owner so far as her navigation was concerned. Her master and crew were the agents of the owner and not of the charterer. The charterer had no control over

her navigation, and was in no way responsible for the negligence which caused the damages. It seems to me, therefore, that it stands in the same position and entitled to the same rights as the innocent cargo owners. I conclude that the libelant in case No. 15,130 should recover of the "Beaver" damages in full without any offset whatever.

COSTS.

It is provided in the interlocutory decree that the original libelant in case No. 15,099 and the claimant therein should divide the costs incurred up to that time, and as to these parties the same provision will be made in the final decree. I take it, however, that the provision as to costs relates to the parties named and not to the rights of [1218] the cargo owner and charterer of the "Selja," who are innocent parties and entitled to a judgment for their costs.

Decrees may be prepared accordingly.

Dated, November 22nd, 1913.

R. S. BEAN,
Judge.

[Endorsed]: Filed Nov. 25, 1913. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [1219]

*In the District Court of the United States in and for
the Northern District of California, First Division.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

Final Decree.

The above cause having come duly on to be heard on the pleadings and proofs of the respective parties, and the same having been argued and submitted, and the Court having rendered its opinion finding both the steamship "Beaver" and the steamship "Selja," in fault, and having made and entered its interlocutory decree so holding and also holding that damages should be awarded accordingly, and the damages suffered by the libelant and those represented by him and by the steamship "Beaver" having been thereafter ascertained, and the Court having on the 25th day of November, 1913, filed its opinion as regards said damages finding the specific damages suffered by each party interested

herein, to which opinion reference is hereby made, and it appearing from said opinion that the damages suffered by the libelant and those represented by him and by the steamship "Beaver" are as follows: [1220]

1. Officers and crew of "Selja":

Alfred Halvorsen, 1st	
officer.....	\$643.50
Alfred Larsen, 2d officer.	372.00
Arvid Bjorn, 3d officer..	249.90
Rambek Eggen, chief	
engineer....	458.28
Axel Andersen, 2d en-	
gineer....	349.30
Pedar Hansen, 3d engineer	292.50
Wong Hai, steward.....	791.10
Choi Hoy, carpenter....	284.75

2. Damages of Olaf Lie,

Master of the "Selja"..... \$1,973.23

3. Damages of Wilhelm Jebsen, owner of the "Selja":

Value of the "Selja" exclusive of the items hereinafter mentioned.....	171,000.00
Spare gear of the "Selja".....	3,056.00
Engine room stores of "Selja"..	951.51
Deck room stores of "Selja"....	950.63
Provisions for Chinese crew of "Selja".....	261.45
Cost of keeping Chinese crew in San Francisco pending their return to China.....	160.63

Cost of returning Chinese crew to China.....	1,771.20
Cost of Maritime Declaration made by the master of the "Selja".....	43.00
Net charter hire for 8 days.....	711.04

4. Damages to the "Beaver"..... 31,829.18

And that to all of said items interest at the rate of six per cent per annum should be added:

And it further appearing that after apportioning the damages suffered by the owner of the steamship "Selja" and by the libelant, Olaf Lie, individually as required by Clause 6 of the interlocutory decree herein, and also making the deductions required under said Clause 6 of said interlocutory decree, there is no balance remaining to be paid to said owner of said "Selja" or said libelant, Olaf Lie, individually, and all and [1221] singular the premises having been duly considered; now, therefore.

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That libelant recover no damages either for himself individually or for the owner of said steamship "Selja."

2. That libelant have and recover from the American Steamship "Beaver" and the above-named claimant on behalf of the following officers and crew of the "Selja" the following sums:

Name.	Principal.	Interest from Nov. 22, 1910. to Date.	Total.
Alfred Halvorsen, 1st officer.....	\$643.50	plus \$119.05	= \$762.55
Alfred Larsen, 2d offi- cer.....	372.00	“ 68.82	= 440.82
Arvid Bjorn, 3d offi- cer.....	249.90	“ 45.41	= 294.90
Rambek Eggen, chief engineer.....	458.28	“ 83.20	= 541.48
Axel Andersen, 2d en- gineer..	349.30	“ 64.59	= 413.89
Pedar Hansen, 3d en- gineer..	292.50	“ 53.13	= 345.63
Wong Hai, steward...	791.10	“ 143.70	= 934.80
Choi Hoy, carpenter..	284.75	“ 51.61	= 336.36

And that said steamship “Beaver” and the said claimant pay to libelant, on behalf of said above-named persons, the said total sums, together with interest thereon at the rate of six per cent per annum from the date of this decree until the same is satisfied.

3. That the costs herein be divided between libelant and claimant.

4. That a summary judgment be and the same is hereby entered for the amount of this decree against the sureties on the bond given herein for the release of the steamship “Beaver.”

Dated: December 2d, 1913.

R. S. BEAN,

Judge (by Assignment) of the United States District Court for the Northern District of California. [1222]

O. K. as to form

McCUTCHEN, OLNEY & WILLARD.

[Endorsed]: Filed Dec. 5, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1223]

In the District Court of the United States in and for the Northern District of California, First Division.

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship "BEAVER," Her Engines, etc.

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

Stipulation as to Costs.

The costs of libelant and claimant being approximately equal, it is hereby stipulated and agreed that said libelant and claimant each pay his and its own costs herein to date, notwithstanding the final

decree herein providing that said costs be divided; but this stipulation shall not prevent either of said parties from claiming said costs in the event of a reversal or modification of said decree on appeal.

Dated: December 6th, 1913.

McCLANAHAN & DERBY,

Proctors for Libellant.

WILLIAM DENMAN,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant.

[Endorsed]: Filed Dec. 9, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1224]

*In the District Court of the United States in and for
the Northern District of California, First Di-
vision.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libellant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

Notice of Appeal.

To Walter B. Maling, Clerk of the Above-entitled Court, San Francisco & Portland Steamship Company, Claimant Herein, and Messrs. William Denman and McCutchen, Olney & Willard, Proctors for Claimant:

Please take notice that the libelant herein on his own behalf and on behalf of Wilhelm Jebsen, owner of the Norwegian steamship "Selja" hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of the District Court of the United States for the Northern District of California dated December 2d, 1913, and filed herein December 5th, 1913, adjudging that libelant recover no damages either for himself individually or for the owner of said steamship "Selja," and that the costs be divided between libelant and claimant. Libelant does not, however, appeal from that part of said decree awarding damages to the officers and crew of said steamship "Selja," but only desires to review [1225] the right of himself and the owner of said "Selja" to recover their damages and costs in the above cause.

Dated: December 8th, 1913.

McCLANAHAN & DERBY,
Proctors for Libelant.

Receipt of a copy of the within Notice of Appeal is hereby admitted this 8th day of December, 1913.

WILLIAM DENMAN,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant.

[Endorsed]: Filed Dec. 9, 1913. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [1226]

*In the District Court of the United States in and for
the Northern District of California, First Di-
vision.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

**Stipulation as to Omission of Papers from Apostles
and as to Sending up Original Exhibits.**

IT IS HEREBY STIPULATED AND AGREED
by and between the parties hereto that the following
pleadings and papers need not be included in the
Apostles on Appeal herein:

1. Petition and libel in intervention of St. Paul Fire & Marine Insurance Co. filed February 28, 1911.
2. Answer to same filed April 25, 1911.
3. Original claim filed December 6, 1910.
4. Claim in intervention suit filed December 6, 1910.

5. Monitions to marshal and returns, filed November 28, 1910, and December 3, 1910.

6. All briefs.

7. Notice of St. Paul Fire & Marine Insurance Co. for leave to intervene, filed February 25, 1911.
[1227]

8. Notice of motion to consolidate causes, etc., filed May 9, 1911.

9. Order extending time to take evidence, filed June 12, 1911.

10. Notice of motion for submission, filed August 11, 1911.

11. Order setting aside submission of causes, filed October 30, 1911.

12. Dismissal of libel in intervention of St. Paul Fire & Marine Insurance Co., filed March 27, 1913.

13. Stipulation and order substituting Francis Krull for James P. Brown as Commissioner, filed May 26, 1913.

14. Stipulation extending time to file brief, filed October 3, 1913.

~~15. Intervening Libellant's Exhibit A, being brief statement in Norwegian as to Rule 16.~~

And it is further stipulated and agreed that all of the original exhibits introduced in evidence in the above cause may be sent up to the Circuit Court of Appeals for the Ninth Circuit as original exhibits and need not be copied.

Dated, December 8th, 1913.

McCLANAHAN & DERBY,

Proctors for Appellant,

McCUTCHEN, OLNEY & WILLARD,

WILLIAM DENMAN,

Proctors for Appellee. [1228]

**Order [for Transmission of Original Exhibits to
U. S. Circuit Court of Appeals].**

Pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that all of the original exhibits introduced in evidence in the above cause may be sent up to the Circuit Court of Appeals for the Ninth Circuit as original exhibits and need not be copied.

Dated, December 9, 1913.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Dec. 9, 1913. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [1229]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That Olaf Lie, libelant herein, as principal, and the National Surety Company of New York, a body corporate duly incorporated under the laws of the State of New York and authorized to act as surety under the Act of Congress approved March 13th, 1904, as amended by the Act of Congress approved March 23d, 1910, whose principal office is located in the city of New York, as surety, are held and firmly bound unto the San Francisco & Portland Steamship Company, claimant herein, in the sum of Two Hundred and Fifty Dollars (\$250) to be paid to the said San Francisco & Portland Steamship Company, its successors and assigns, for the payment of which well and truly to be made, we bind ourselves and each of us and our respective heirs, executor, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 12th day of December, 1913. [1230]

WHEREAS, Olaf Lie, libelant herein, has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the District Court of the United States for the Northern District of California, dated December 2d, 1913, and filed December 5th, 1913, in a suit wherein Olaf Lie is libelant against the American steamship "Beaver," her engines, etc., and wherein the said San Francisco & Portland Steamship Company is claimant of said "Beaver";

NOW, THEREFORE, the condition of this obligation is such that if the said libellant and appellant shall prosecute said appeal with effect, and pay all costs which may be awarded against him as such appellant, if the appeal is not sustained then this obligation shall be void; otherwise the same shall remain in full force and effect.

OLAF LIE,

By E. B. McCLANAHAN,
And S. G. DERBY,

His Attorneys.

NATIONAL SURETY COMPANY OF
NEW YORK.

[Seal] By FRANK L. GILBERT,

Its Resident Vice-president and Pacific Coast General Manager and Attorney in Fact.

The foregoing cost bond on appeal is hereby approved as to form, amount and sufficiency of surety.

WILLIAM DENMAN,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant and Appellee.

[Endorsed]: Filed Dec. 13, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1231]

*In the District Court of the United States in and for
the Northern District of California, First Divi-
sion.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
“SELJA,” on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship “BEAVER,” Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,
Claimant.

Notice of Filing Bond on Appeal.

To the San Francisco & Portland Steamship Com-
pany, Claimant and Appellee Herein, and to
William Denman, McCutchen, Olney & Wil-
lard, Its Proctors:

Please take notice that libelant's bond on appeal
for costs in the sum of \$250.00 was filed in the office
of the above-named court on the 13th day of De-
cember, 1913, with the libelant herein as principal,
and the National Surety Company, a corporation
duly organized and existing under the laws of the
State of New York and authorized to do business in
the State of California, whose residence is in New
York and whose local office is at 105 Montgomery

Street, San Francisco, as surety.

Dated: December 13th, 1913.

McCLANAHAN & DERBY,

Proctors for Libelant and Appellant. [1232]

Receipt of a copy of the within Notice is hereby admitted this 13th day of December, 1913.

WILLIAM DENMAN,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Claimant and Appellee.

[Endorsed]: Filed Dec. 15, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1233]

*In the District Court of the United States in and for
the Northern District of California, First Divi-
sion.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

Assignment of Errors.

Now comes Olaf Lie, master of the Norwegian steamship "Selja," on behalf of himself and the

owners, officers and crew of said steamship, libelant in the above cause and appellant herein, and says that in the record, opinions, decisions, interlocutory and final decrees and proceedings in the above cause there is manifest and material error, and said appellant now makes, files and presents the following assignment of errors on which he relies, to wit:

1. That the Court erred in holding, deciding and decreeing herein that libelant recover no damages either for himself individually or for the owner of the Norwegian steamship "Selja," and in not awarding to libelant the full damages suffered by himself and said owner as set forth in the final decree herein.

2. That the Court erred in holding, deciding and decreeing that the damages of the owner of the "Selja" and the libelant as her master should be apportioned under the usual rule of [1234] cross-liabilities and subject to the offsets specified in Clause 6 of the Interlocutory Decree herein, and in not awarding said damages in full without offset.

3. That the Court erred in allowing any offsets under Clause 6 of the Interlocutory Decree herein.

4. That the Court erred in holding and deciding that the said steamship "Selja" was in any way at fault in the collision with the steamship "Beaver," which was the subject of this action.

5. That the Court erred in holding and deciding that the said "Selja" violated the second paragraph of Rule 16 regulating the navigation of vessels at sea (26 St. at L. 326).

6. That the Court erred in holding and deciding

that the violation by the "Selja" of said Rule 16 was a contributing cause to the collision herein.

7. That the Court erred in holding and deciding that where a vessel has committed a positive breach of a statutory duty she must show not only that probably her fault did not contribute to the disaster but that it could not have done so.

8. That the Court erred in not holding and deciding that where a vessel is so navigated as to enable her to come to a stop before collision with another vessel, after sighting such other vessel, her prior violation of said Rule 16 is not a contributing cause of the collision, and in not applying said rule to the case at bar.

9. That the Court erred in holding that said "Selja" and said "Beaver" were equally at fault, and in not applying the major and minor fault doctrine and holding the "Beaver" solely liable for the collision.

10. That the Court erred in not making and entering its final decree herein allowing libelant all damages suffered by himself and the owner of said "Selja," with interest and costs. [1235]

11. That the Court erred in dividing the costs herein and not allowing libelant his costs herein.

In order that the foregoing assignment of errors may be and appear of record, said appellant files and presents the same, and prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided, and said appellant prays a reversal of the

San Francisco & Portland Steamship Co. 1449
decree herein heretofore made and entered in the
above cause and appealed from.

Dated: San Francisco, Cal., December 17th, 1913.

McCLANAHAN & DERBY,
Proctors for Libelant and Appellant.

Receipt of a copy of the within Assignment of
Errors is hereby admitted this 17th day of December,
1913.

WILLIAM DENMAN,
McCUTCHEN, OLNEY & WILLARD,
Proctors for Claimant and Appellee.

[Endorsed]: Filed Dec. 19, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1236]

*In the District Court of the United States in and for
the Northern District of California, First Divi-
sion.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," on Behalf of Himself and the
Owners, Officers and Crew of Said Steamship,
Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

**Stipulation [as to Translation of Intervening
Libelant's Exhibit "A"].**

It is hereby stipulated and agreed that the following translation of Intervening Libelant's Exhibit "A" made at the Norwegian Consulate in San Francisco is a correct translation of said exhibit, and that said translation may be transmitted to the Circuit Court of Appeals herein instead of said original exhibit:

"Translation: A steam vessel which hears a fog signal of another vessel apparently forward of her beam and the position of which cannot with certainty be determined shall, so far as present circumstances will permit, stop her engine and navigate with care until all danger of collision is over."

Dated: December 17th, 1913.

McCLANAHAN & DERBY,

Proctors for Appellant.

WILLIAM DENMAN,

McCUTCHEN, OLNEY & WILLARD,

Proctors for Appellee.

[Endorsed]: Filed Dec. 19, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1237]

*In the District Court of the United States in and for
the Northern District of California, First Divi-
sion.*

No. 15,099.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," etc.

Libelant,

vs.

The American Steamship "BEAVER," Her En-
gines, etc.,

Libelee.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Claimant.

Stipulation as to Exhibits Attached to Depositions.

It is hereby stipulated and agreed that the attached translations made at the Norwegian Consulate in San Francisco of Libelant's Exhibit 1 and 2 attached to the depositions of the officers of the S. S. "Selja" are correct and may be transmitted to the Circuit Court of Appeals together with said original exhibits in Norwegian. It is further stipulated, however, that said translations are subject to such explanation thereof as may be found in the testimony.

Dated: December 30th, 1913.

McCLANAHAN & DERBY,

Proctors for Libelant and Appellant.

McCUTCHEN, OLNEY & WILLARD,

IRA A. CAMPBELL,

WILLIAM DENMAN,

Proctors for Claimant and Appellee. [1238]

Translation of Libelant's Exhibit 1.

Tuesday 22 November 1910.

From 1 o'clock a. m. proceeded at partly half and partly full speed with respectively 40 and 60 revolutions a minute owing to fog.

From 8 a. m. proceeded at very slow speed about 20 revolutions. At 1 p. m. there was telegraphed half speed and then proceeded with about 40 revolutions until 3.5" p. m., when slow speed was ordered and at 3.10" stop. At 3.15" full speed astern was ordered, which was immediately obeyed, and the engines worked astern for about three minutes, when there was signaled stop. Then we were ordered by the Captain to come up from the engine room, and we each one went to his place at the boats. The 3d engineer and an oiler had the watch from 12 to 4 p. m. About 3.15 the Chief and 2nd engineer heard a deep whistle and saw the contour of a vessel, and both hurried down into the engine room. The engine was then going full speed astern, and the Chief engineer assumed command.

San Francisco 23 November 1910.

Sgd. R. EGGEN,
Chief Engineer.

AXEL ANDERSEN, 2nd engineer.

PEDAR HANSE, 3d engineer. [1239]

Translation of Libelant's Exhibit 2.**Log-book Entry for Steamer "Selja."**

Tuesday 22 November 1910 on the voyage from Yokohama to San Francisco. At 1 a. m. the fog

closed down, wind light and changeable, high westerly swell; according to reckoning about 70 miles off Point Reyes. Steered true S. 52° E. and kept the whistle going. At 5.30 a. m. commenced to sound and kept the lead going until 8 a. m. when according to soundings (45 fathoms) judged to be about 7 miles off Point Reyes.

We then decided to change the ships course and go westward with about 20 revolutions to keep the vessel steering. The fog was then very thick.

Changed the course again at 9.30 and steered East by N. by compass with the same speed and kept the lead going, until we had 40 fathoms. The foghorn at Point Reyes could not as yet be heard. At 11 a. m. again swung westerly.

At 1. p. m. the fog seemed to lift a little, and we decided to go eastward (S. 60° E. magn.) again with about 40 revolutions (6 miles speed) at the same time sounding every five minutes. At 2.30 p. m. heard the foghorn at Point Reyes a little on port bow and passed same at 2.50 about $1-1\frac{1}{2}$ miles off, according to sounding. We then set the course by compass S. 65° E. straight for the lightship.

At 3 o'clock we heard a deep steam whistle ahead quite faint and from then on heard it about every minute; we answered with about the same interval. At 3.5'' p. m. ordered slow speed, as we heard the whistle nearing, and at 3.10 stopped the engine, the vessel being then nearly at a standstill. At 3.15'' saw the contour of the other vessel, and we then ordered full speed astern at the same time giving three

blasts in the whistle. [1240] We then heard also three blasts from the other steamer, but it showed up coming along with so much speed, that we could see the foam at its bow and coming at a right angle with our vessel, as she had swung through reversing the engines.

About 1 1½ minute after we saw the vessel, it smashed into our port side at the fore rigging, and penetrated our vessel through ship and cargo for about 10 feet, when it stopped and backed out at once.

All boats were at once made ready. The port gig with some of the crew and the Captain, wife and 2 children left the ship first then the port life boat. The Captain, 2nd mate, and 2nd engineer and some of the crew went into the starboard gig with the ship's papers and logbook, but as the ship listed so much to port, the boat was crushed against the side and the ship's papers and logbook were lost. Several were thrown into the sea, while the Captain, 2nd mate and one of the crew succeeded in climbing back on board, jumped overboard on the other side and were picked up by one of the other steamers boats, when they rowed around to the starboard side and picked up those in the water. The starboard life boat could not be launched owing to the great list. The *Selja* sank in 15 minutes after the collision and turned turtle as she sank.

The vessel that ran into us proved to be the steamer *Beaver* of San Francisco belonging to San Francisco and Portland S. S. Co.

In calling the roll of the crew after we *cam* on board the *Beaver*, it was found, that two Chinese

seamen were missing.

The Beaver returned to San Francisco after we were satisfied that no one was to be seen afloat, where the Selja went down. [1241]

During the whole time one of the mates and the captain were on the bridge and a lookout on the fore-castle. At the sounding machine were one of the mates and some of the crew.

San Francisco 23 November, 1910.

Sgd. OLAF LIE,

Master.

A. HALVORSEN,

1st Mate.

ALFRED LARSEN,

2nd Mate.

ARVID BJORN,

3d Mate.

[Endorsed]: Filed Dec. 31, 1913. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1242]

*In the District Court of the United States for the
Northern District of California.*

PORTLAND AND ASIATIC STEAMSHIP COM-
PANY, a Corporation,

Libellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Libel in Personam [in Portland and Asiatic Steamship Co. vs. S. F. & Portland Steamship Co.].

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The libel of the Portland and Asiatic Steamship Company, a corporation, against the San Francisco & Portland Steamship Company, a corporation, in a cause of collision, civil and maritime, alleges as follows:

I.

That libelant is and at all times in this libel mentioned was a corporation duly organized and existing under the laws of the State of Oregon, and that respondent is and at all times in this libel mentioned was a corporation organized and existing under the laws of the State of California, with its principal place of business in the City and County of San Francisco in said State and in the Northern District of California, and the owner of the American steamship "Beaver" hereinafter mentioned; and that both libelant and respondent occupy the same offices both in said City and County of San Francisco and in the City of Portland in the State of Oregon, and have the same corporate officers who act in similar capacities in each of said corporations. [1243]

II.

That on, to wit, the 1st day of February, 1909, a certain Time Charter-party was made and entered into in the City of New York, State of New York, by and between this libelant and the owners of the Nor-

wegian steamship "Selja," wherein and whereby said owners of said "Selja" chartered and let to hire the said steamship to the libelant herein for a period of about three years, and that said steamship was proceeding under said charter-party at all times herein-after mentioned. Libelant further alleges that said charter-party was not a demise of the vessel, but was a mere contract of affreightment for the carriage of merchandise and livestock and passengers by the libelant on board said vessel.

III.

That in pursuance of said charter-party, and upon one of the voyages duly entered upon thereunder by said steamship "Selja," libelant procured to be shipped on board said steamship by various persons in the months of October and November, 1910, at the ports of Hong Kong and Shanghai, in the Empire of China, and the ports of Kobe and Yokohama, in the Empire of Japan, a large and varied assortment of goods, wares and merchandise destined in part for the port of San Francisco in the State of California and in part for the port of Portland in the State of Oregon, and that bills of lading were duly issued for said goods, wares and merchandise by this libellant to the shippers of the same.

IV.

That in and by said bills of lading it was provided that freight should be paid to libelant for the carriage aforesaid on said goods, wares and merchandise at certain rates [1244] which were the usual and reasonable rates for the transportation of said goods, wares and merchandise to said ports of San Fran-

cisco and Portland, and that said freight amounted in the aggregate, excluding all prepaid freight, to the sum of Fourteen Thousand and Eighty-eight and 36/100 Dollars (\$14,088.36), and was payable at the said ports of San Francisco and Portland upon the delivery of said goods, wares and merchandise to the consignees thereof.

IV.

That the aforesaid bills of lading in the last article of this libel mentioned are very numerous and are scattered in the hands of the consignees of said goods, wares and merchandise in various parts of the world, and all of libelant's copies thereof, so far as it has such copies, are at the various ports in China and Japan herein mentioned and cannot be set out in this libel at the present time; that libelant has a duplicate of the ship's manifest taken from said bills of lading showing the nature of the goods, wares and merchandise shipped and the amount of freight payable thereon, but that said document and the facts contained therein are complicated and of great length and are not herein fully set forth for the reason that all facts in regard thereto are as fully within the knowledge of the respondent as they are within the knowledge of libelant, and that the respondent has full access to all documents and all facts connected with libelant's said claim for freight.

VI.

That the aforesaid steamship "Selja" left the port of Yokohama, which was the last place at which she loaded any of the goods, wares and merchandise aforesaid, on, to wit, the [1245] 2d day of Novem-

ber, 1910, on a voyage to the said ports of San Francisco and Portland under the Time Charter aforesaid, and that on Tuesday, the 22d day of November, 1910, a collision occurred between the said steamship "Selja" and the aforesaid steamship "Beaver," owned by the respondent herein, on the high seas near Point Reyes on the coast of California, and within a few hours' sailing distance of the aforesaid port of San Francisco, by reason of which the said steamship "Selja" was sunk and the goods, wares and merchandise herein described and libelant's freight thereon were totally lost.

VII.

That libelant is informed and believes and upon such information and belief alleges that the following are, in brief, the circumstances of said collision:

On the said 22d day of November, 1910, the said steamship "Selja" was proceeding on her voyage aforesaid to the port of San Francisco, and at about the hour of 1 o'clock A. M. on said day, when about 70 miles off Point Reyes on the coast of California, she encountered a dense fog which did not lift at any time before said collision, which occurred but a short interval of time after 3:15 P. M. of said day. That at about the hour of 2.30 P. M. the fog-horn on Point Reyes was heard off the port bow at a seeming distance of about 2 miles, and at 2:50 P. M. the said fog-horn was heard right abeam of the "Selja," and her course was then changed from south 60° east to south 65° east magnetic, heading for the lightship off the Golden Gate. Her speed at this time was about 6 miles per hour; her master and third

officer were on the bridge; a competent man was on the lookout and another at the wheel, and they, as well as the rest of the crew who were variously employed in [1246] their respective duties, were faithfully attending thereto; soundings were being taken and the vessel's fog-whistle was being blown, as required by the regulations for avoiding collisions at sea, up to the time of the collision itself herein-after described. At about 3 o'clock P. M. a deep distant whistle was heard in an ascertained position dead ahead of the "Selja" and apparently a long way off, which afterwards proved to be that of the aforesaid steamship "Beaver" outward bound from the port of San Francisco on one of her regular voyages from that port to the port of Portland, in the State of Oregon, but that at the time the officers of said "Selja" could not tell whether the same was the whistle of a steamer or not. Said whistle was at once answered by a long blast of the "Selja's" whistle. The whistle of the "Beaver" was repeated at intervals of about a minute but seemingly nearer, until at about 3:05 P. M. the "Selja's" engines were put at slow speed, and the officers of said "Selja" then began to time said whistles to ascertain whether they were those of a steamer, which fact they did not yet know. That after timing said whistles, and discovering therefrom by this means at about 3:10 P. M. that said whistle was that of an approaching steamer, the "Selja's" engines were stopped. The failure to stop said engines earlier was in no way a contributing cause to the collision which followed, which was caused solely by the gross faults of the "Beaver." At

the time the "Selja's" engines were stopped she was making about 3 knots per hour, and her course was still south 65° east, and this course was not changed, but after the engines were stopped and at 3:15 P. M. the vessel had swung about one point to starboard. The fog was still dense; there was but little wind and a westerly swell; the fog-whistle of the "Selja" had been regularly answering that of the "Beaver" up to this time. Under [1247] these conditions and circumstances the "Beaver" suddenly appeared through the fog at a distance of about 300 yards, and about 2 points on the "Selja's" bow, coming at a very high rate of speed, to wit, at a speed of eleven knots an hour or more, and heading for the port side of the "Selja." The master of the "Selja" at once ordered his engines full speed astern at the same time giving three blasts of her whistle, and her engines were put full speed astern, and the steamship began to gather some sternway and her bow began to swing more to starboard under the effect of the reverse movement of her engines, but the "Beaver," without apparently checking her speed or changing her course, struck the "Selja" on the port side between the forward and the main hatch, and cut her way through the steel plates and cargo of the "Selja" for a distance of about 10 feet or more, and then backed out clear of the "Selja." After the impact, the "Selja" listed heavily to port and water poured into the hole made by the "Beaver's" bow, and the "Selja's" master immediately ordered her boats lowered and her engines stopped. That with the assistance of some of the "Beaver's" boats the master,

officers and crew of the "Selja," together with the master's wife and two children, were taken from the "Selja" on board the "Beaver," and a few minutes thereafter the "Selja" turned turtle and sank together with all of the goods, wares and merchandise herein described, and that the sinking of said goods, wares and merchandise and the consequent loss of libelant's freight thereon as hereinbefore described was caused solely by the injuries received in said collision.

And libelant further alleges upon information and belief that the said collision was in no way due to any fault on the part of the said "Selja" which was at said time, and at all [1248] times in this libel mentioned before such collision, in all respects tight, staunch and strong and in every respect well manned, tackled, appareled and appointed and having the usual and necessary complement of officers and men, and that said "Selja" was in all respects carefully managed and navigated; but that said collision was wholly due to and brought about by the negligence and incompetency of those in charge of the said "Beaver" by their failure to duly and properly observe the rules and laws of navigation, and not otherwise.

Libelant further alleges, however, that the freight interest upon which it seeks a recovery in this libel was an innocent one, and that the aforesaid steamship "Beaver" is responsible for the loss of said freight irrespective of the question whether the aforesaid steamship "Selja" was partly in fault or not.

VIII.

That by reason of said collision libelant's freight, amounting to the sum of Fourteen Thousand and Eighty-eight and 36/100 Dollars (\$14,088.36), as hereinbefore described, was totally lost and it has been damaged by reason of said collision in said amount.

IX.

That all and singular the premises are true and are within the admiralty and maritime jurisdiction of this court.

WHEREFORE, the libelant prays that a monition in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said San Francisco & Portland Steamship Company, and that it be cited to appear and answer upon oath all [1249] and singular the matters aforesaid, and that this Honorable Court would be pleased to decree payment of the freight aforesaid, with interest and costs, and that the libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

Dated March 28th, 1911.

McCLANAHAN & DERBY,
Proctors for Libelant.

Verification of the foregoing libel is hereby expressly waived.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
Attorneys for Respondent. [1250]

**Interrogatories Propounded to Respondent by
Libel.**

The libelant herein, in pursuance of Admiralty Rule 23 in such cases made and provided, propounds the following interrogatories to the respondent herein:

1.

What is the maximum speed of the American steamship "Beaver," and her revolutions and horsepower at that speed?

2.

What is her displacement fully loaded?

3.

What was her displacement upon proceeding to sea on November 22d, 1910?

4.

What was the slip of her propeller on that occasion?

5.

At what speed was the said "Beaver" proceeding at 3 o'clock P. M. on November 22d, 1910, what revolutions were her engines making at that time and what was the slip of her propeller?

6.

What variations, if any, took place in said speed and revolutions between the hours of 3 P. M. and 3:15 P. M.?

7.

Were any orders given on board said steamship "Beaver" to either stop or reverse her engines between said hours of 3 P. M. and 3:15 P. M.?

8.

If your answer to the seventh interrogatory is in

the affirmative, state what such orders were, when they were given and when they were executed?
[1251]

9.

When did the "Beaver" enter the fog in the libel mentioned?

10.

Did she, at the time of entering the fog, reduce her speed and, if so, from what speed was such reduction made and what was the amount of such reduction?

11.

From 3 P. M. to 3:15 P. M. on November 22d, 1910, were there any conditions prevailing on the bridge of the "Beaver" which would make it difficult to hear the fog-signals of other vessels?

12.

If your answer to the eleventh interrogatory is in the affirmative, state in detail what those conditions were.

McCLANAHAN & DERBY,
Proctors for Libellant.

[Endorsed]: Filed Mar. 30, 1911. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [1252]

[Answer of S. F. & Portland S. S. Co. to Libel of
Portland & Asiatic S. S. Co.]

*In the District Court of the United States for the
Northern District of California.*

PORTLAND AND ASIATIC STEAMSHIP,
Libellant,

vs.

SAN FRANCISCO AND PORTLAND STEAM-
SHIP COMPANY,

Respondent.

To the Honorable JOHN J. DE HAVEN, Judge of
the District Court of the United States, for the
Northern District of California:

The answer of San Francisco and Portland Steam-
ship Company, respondent herein, to the libel of
Portland and Asiatic Steamship Company, libellant
herein, respectfully shows to this Court: [1253]

I.

Answering unto the first, second, third, fourth,
fifth and sixth articles in said libel, the respondent
admits the same.

II.

Answering unto the seventh article in said libel,
the respondent admits that at the time referred to in
the said libel, the steamship "Beaver" was outward
bound from San Francisco to Portland; that there
was at said time a dense fog prevailing and that the
"Beaver" was repeating blasts of her whistle at in-
tervals of less than a minute. The respondent ad-
mits that the "Beaver" struck the "Selja" and that

the latter sunk, and that the libelant's freight was thereby lost, but it denies that before the collision, at the time alleged, the "Beaver" was going at a speed of eleven knots or more, or that she had not checked her speed or changed her course; on the contrary, the respondent avers that at the said time, the "Beaver's" engines were and had for thirty seconds been going full speed astern and that her head was swinging rapidly to starboard with the intention of stopping, or, if impossible, of passing astern of the "Selja." The respondent admits that at some time in the afternoon, but whether first at three o'clock the respondent is ignorant, the [1254] "Selja" heard a deep whistle, afterwards ascertained to be that of the "Beaver," but it denies that such whistle was heard in an ascertained position; it admits that the engines of the "Selja" were stopped at some period after the hearing of the said whistle, but it denies that the failure to stop said engines sooner was in no way a contributing cause to the collision, and it denies that said collision was caused solely by the gross faults of the "Beaver." It denies that the said collision was in no way due to any fault on the part of the "Selja," or that the "Selja" was in all respects carefully managed or navigated; it denies that said collision was wholly, or at all, due to or brought about by the negligence or incompetency of those in charge of the "Beaver" by reason of their failure to duly or properly observe the rules or laws of navigation, or otherwise. It alleges on the contrary, that the master of the "Selja" failed to observe the rules of navigation in the following partic-

ulars, viz.: First, that he did not cause the engines of the "Selja" to be stopped immediately on hearing the fog-signal of the "Beaver" forward of the "Selja's" beam, the position of the "Beaver" at that time, except as to the fact that she was forward of the beam, not being ascertained or ascertainable unless the fog should lift, and there being no special circumstances requiring the "Selja" to keep her headway. Second, that prior to three o'clock [1255] P. M. and thereafter for a considerable period after hearing the "Beaver's" signal ahead, the "Selja" proceeded towards the sound of the signal at a high rate of speed, whereby she reached the point of collision, which point would not have been reached (the collision thereby being averted) if she had not been going at said high rate of speed. Third, that after the "Selja" came to be stopped in the water, if such was the fact, the said master failed to give a signal thereof as required by the rules of navigation.

As to all other of the allegations of said article, not specially admitted or denied herein, the respondent avers that it is ignorant, so that it can neither admit or deny the same, wherefore it calls for proof thereof, if the same be pertinent.

III.

Answering unto the eighth article in said libel, this respondent admits the loss of freight therein described.

IV.

Answering unto the ninth article in said libel, this respondent admits the jurisdiction of this Honorable

Court, but denies that all and singular the premises are true except as is hereinbefore specially admitted.

WHEREFORE, the respondent prays that the said libel be dismissed and for costs.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
WILLIAM DENMAN,

Proctors for Respondent. [1256]

**Answers to Interrogatories Propounded to Claimant
by Libel.**

Answering to interrogatory No. I, claimant says that it does not know the maximum speed of the "Beaver" at the date of the filing of the libel, but that her speed at her trial trip at Newport News, in 1910, was 17.6 knots at 86 revolutions, and 4448 I. H. P.

Answering interrogatory No. II, claimant says that her displacement, fully loaded, is 5950 tons on a 19-foot 6-inch draught.

Answering interrogatory No. III, claimant says that her displacement on proceeding to sea November 22, 1910, was 4800 tons.

Answering interrogatory No. IV, claimant says that it does not know.

Answering interrogatory No. V, claimant says that the speed of the "Beaver" at three o'clock was eleven knots, her engines making 77 revolutions per minute, and with a slip of 25 per cent.

Answering interrogatory No. VI, claimant says that at 3:10 o'clock P. M., the revolutions were reduced from 77 to 76.

Answering interrogatory No. VII, claimant says, "Yes."

Answering interrogatory No. VIII, claimant says that orders were given to reduce the speed to 76 revolutions at about three o'clock, and that they were executed shortly thereafter.

Answering interrogatory No. IX, claimant says that the "Beaver" entered the fog on leaving the port of San Francisco.

Answering interrogatory No. X, claimant says that she did not reduce her speed as, at the time of entering the fog, she had not raised her rate of speed from her rate inside the harbor. [1257]

Answering interrogatory No. XI, claimant says, "No, other than climatic and weather conditions."

City and County of San Francisco,
State of California,—ss.

A. J. Frey, being first duly sworn, deposes and says:

That he is the Assistant Managing Agent of the claimant corporation, and that he is authorized to make oath on its behalf; that he has read the foregoing answers to the interrogatories propounded by the libel, and that the same are true as he verily believes.

A. J. FREY.

Subscribed and sworn to before me this 15th day of May, 1911.

[Seal]

FRANK L. OWEN,

Notary Public in and for the City and County of
San Francisco, State of California.

Service of the within answer and receipt of a copy is hereby admitted this 16th day of May, 1911.

McCLANAHAN & DERBY,

Proctors for Libellant.

San Francisco & Portland Steamship Co. 1471

[Endorsed]: Filed May 17, 1911. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [1258]

**[Amendments to Libel in Portland & Asiatic S. S.
Co. vs. S. F. & Portland S. S. Co.]**

*In the District Court of the United States for the
Northern District of California, First Division.*

No. 15,130.

PORTLAND AND ASIATIC STEAMSHIP
COMPANY, a Corporation,

Libelant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,

Respondent.

Now comes the libelant herein and pursuant to the stipulation of the parties herein dated April 22d, 1912, hereby amends its libel herein by adding after Article VIII of said libel a new Article numbered VIIIA reading as follows:

VIIIA.

And libelant further alleges, by way of amendment to its libel herein, as follows:

That at the time of said collision libelant had on board said steamship "Selja" and was the owner of the following articles:

1170 tons of Bunker Coal of the reasonable value of \$2.565 a ton and of the total value of \$3,001.05; 30 flour slings of the reasonable value of \$5.00 each and of the total value of \$150.00; one house flag of

the reasonable value of \$3.00, and dunnage mats and wood of the reasonable value of \$55.00; all of said articles being of the total value of \$3,209.05.

That by reason of said collision and the negligence of those in charge of the steamship "Beaver" as aforesaid, all of said articles were totally lost, and libelant has been further [1259] damaged by reason of said collision in said above-mentioned amounts, for which it prays full recovery with interest in addition to its recovery for freight.

Dated: April 22d, 1912.

McCLANAHAN & DERBY,
Proctors for Libelant.

Received copy of within Amendment to Libel,
April 22d, 1912.

PAGE, McCLANAHAN, KNIGHT & OLNEY,
DENMAN AND ARNOLD,

Attorneys for Respondent.

[Endorsed]: Filed Apr. 23, 1912. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [1260]

*In the District Court of the United States for the
Northern District of California, First Division.*

No. 15,130.

PORTLAND AND ASIATIC STEAMSHIP
COMPANY, a Corporation,

Libelant,

vs.

**SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY, a Corporation,**

Respondent.

**Stipulation for Amendment of Libel in Portland &
Asiatic S. S. Co. vs. S. F. & Portland S. S. Co.**

It is hereby stipulated and agreed by and between the parties hereto that the libel herein may be amended by adding after article VIII thereof a new article numbered VIIIA, reading as follows:

“VIIIA.

And libelant further alleges, by way of amendment to its libel herein, as follows:

That at the time of said collision libelant had on board said steamship ‘Selja’ and was the owner of the following articles:

1170 tons of Bunker Coal of the reasonable value of \$2,565 a ton and of the total value of \$3,001.05; 30 flour slings of the reasonable value of \$5.00 each and of the total value of \$150.00; one house flag of the reasonable value of \$3.00, and dunnage mats and wood of the reasonable value of \$55.00; all of said articles being of the total value of \$3,209.05.

That by reason of said collision and the negligence of those in charge of the steamship ‘Beaver’ as afore-said, all [1261] of said articles were totally lost, and libelant has been further damaged by reason of said collision in said above-mentioned amounts, for which it prays full recovery with interest in addition to its recovery for freight.”

It is further stipulated and agreed that said amendment may be made separately and without filing an amended libel, that the verification of said

amendment is hereby waived and that the respondent have 10 days from the date of service of said amendment within which to answer the same.

And it is further stipulated and agreed that the making of said amendment shall in no way affect the submission of the above cause for decision on the question of liability for the collision described in the libel herein.

Dated: April 22d, 1912.

McCLANAHAN & DERBY,
Proctors for Libelant.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
WILLIAM DENMAN,
DENMAN & ARNOLD,
Proctors for Respondent.

We, the proctors for the parties in Case No. 15,099 consolidated for trial with the above cause, hereby consent to and approve the foregoing stipulation.

McCLANAHAN & DERBY,
Proctors for Libelant in Case No. 15,099.

LOUIS T. HENGSTLER,
Proctor for Intervening Libelant in Case No. 15,099.

PAGE, McCUTCHEN, KNIGHT & OLNEY,
WILLIAM DENMAN,
DENMAN & ARNOLD,

Proctors for Claimant in Case No. 15,099.

[Endorsed]: Filed Apr. 23, 1912. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [1262]

[Certificate of Clerk U. S. District Court to
Apostles.]

United States of America,
Northern District of California,—ss.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed twelve hundred and sixty-two (1262) pages, numbered from 1 to 1262, inclusive, transmitted herewith in four volumes, the fourth volume of which is attached hereto; and with the accompanying exhibits, 36 in number, transmitted under separate covers, contain a full, true and correct transcript of the records as the same now appear on file and of record in the said District Court, in the cause entitled *Olaf Lie etc. vs. The American Steamship "Beaver," No. 15,099*, as consolidated with the case of *Portland & Asiatic Steamship Company, etc., vs. San Francisco & Portland Steamship Company, etc., No. 15,030*; said Transcript is made up pursuant to and in accordance with "Praeceptum for Transcript on Appeal" (embodied in said Transcript), and the instructions of Messrs. McClanahan and Derby, proctors for libelants and appellants.

I further certify that the cost of preparing and certifying to the foregoing Transcript of Appeal is the sum of Six Hundred Seventy-four Dollars and Eighty Cents (\$674.80), and that the same has been paid to me by proctors for libelants and appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 2d day of January, A. D. 1914.

[Seal]

W. B. MALING,
Clerk.

By Lyle S. Morris,
Deputy Clerk.

[Endorsed]: No. 2365. United States Circuit Court of Appeals for the Ninth Circuit. Olaf Lie, Master of the Norwegian Steamship "Selja," on Behalf of Himself and the Owners, Officers and Crew of Said Steamship, Appellant, vs. San Francisco & Portland Steamship Company, a Corporation, Claimant of the American Steamship "Beaver," Her Engines, etc., Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed January 2, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

No. 2365.

OLAF LIE, Master of the Norwegian Steamship
"SELJA," etc.,

Appellant,

vs.

SAN FRANCISCO & PORTLAND STEAMSHIP
COMPANY,

Appellee.

Stipulation Waiving Printing of Original Exhibits.

Whereas, there are a very large number of exhibits in the above cause and it is deemed unnecessary by the parties that the same should be printed in that those referred to, if any, can be fully described in the briefs herein; now, therefore,

It is hereby stipulated and agreed that none of the exhibits in the above cause need be printed, but that the same may be considered as original exhibits even though not printed.

Provided, however, that either party may cause any of said exhibits to be printed either as a part of the record or as an appendix to its brief, and that the cost of such printing, if any, may be taxed as costs against the losing party.

Dated: January 5th, 1914.

E. B. McCLANAHAN,
S. H. DERBY,

Proctors for Appellant.

WILLIAM DENMAN,
EDWARD J. McCUTCHEN
LEO A. CAMPBELL,

Proctors for Appellee.

Order [Waiving Printing of Original Exhibits].

Pursuant to the foregoing stipulation, IT IS HEREBY ORDERED that none of the exhibits in the above cause need be printed, but that the same may be considered as original exhibits even though not printed. Provided, however, that **either party** may cause any of said exhibits to be printed either as a part of the record or as an appendix to its brief and that the cost of such printing, if any, may be taxed as costs against the losing party.

Dated: January 5, 1914.

WM. W. MORROW,

Circuit Judge.

[Endorsed]: No. 2365. In the U. S. Circuit Court of Appeals for the 9th Circuit. Olaf Lie, Master of Norwegian S. S. "Selja," etc., Appellant, vs. San Francisco & Portland S. S. Co., Appellee. Stipulation as to Exhibits and Order. Filed Jan. 5, 1914. F. D. Monckton, Clerk.

Libelant's Exhibit No. 19.*

**STATEMENT OF CAPTAIN WM. KIDSTON,
MASTER OF THE STEAMER "BEAVER."**

Nov. 25, 1910.

U. S. Local Inspectors of Hulls & Boilers,
San Francisco, Cal.

Gentlemen:

At 3:16 P. M. Nov. 22nd, bound from San Francisco to Portland, Pt. Reyes bearing NW. x W. $\frac{1}{2}$ W, 6 miles Mag. south end bearing NW. $\frac{1}{2}$ N. 4 miles, the S. S. "Beaver" was in collision with the Norwegian S. S. "Selja," sinking the latter and doing considerable damage to the S. S. "Beaver's" stem and bow plating forward of collision bulkhead.

The S. S. "Beaver" left Pier 40 at 12:50 P. M. and proceeded to sea going out the north channel. There was a light high fog, but the land and buoys marking the channel, plainly in sight. After getting through the channel, we encountered a very heavy westerly swell, had a good departure from #2 Red Buoy and set our usual course S. 83° W. Bridge Compass, Mag. S. 86° W. to Duxberry Reef Buoy which we passed $\frac{1}{2}$ mile off at 2:15 P. M. Then altered course to N. 86° W. Bridge Compass (No deviation on this course) which course would take us $2\frac{1}{2}$ miles off Pt. Reyes at this time 2:15 P. M. The fog would lift and shut down so that we could only see about $\frac{1}{2}$ a mile at times, and continued so until 3:00 P. M., when the fog shut in thick. I then sent written instructions to the Chief Engineer to

[*Printed at request of Libelant.]

slow the engine to 76 turns per minute. Our automatic fog whistle was blowing its usual blast of 5 seconds every minute; the lookout had been doubled. On the bridge with myself was the 2nd Officer and a Quartermaster. I had stepped off the bridge for a minute to the toilet, which is at the foot of the bridge ladder. When I returned to the bridge the 2nd Officer reported that he had just heard a steamer's whistle a point on our starboard bow. I ordered the helm to starboard thinking that I was overtaking a steamer on the same course or some steamer bound down for the North Channel. Our automatic whistle blew just then, and after it stopped, I heard the "Selja" whistle, and it sounded about a point on our starboard bow, although our head had swung a half point to Port more than when we first heard her whistle. I then telegraphed to stop the engine and full speed astern. This was at 3:15 P. M., I ordered the helm hard-a-port and blew three whistles. Although I had not seen the steamer, I made up my mind that she was crossing our bow, and with the helm hard-a-port and backing full speed, I was trying to stop the ship's headway, or get her head cantered enough to starboard to pass around her stern.

A few seconds later we sighted the S. S. "Selja" about two ship's lengths ahead and a little on our starboard bow, and heading right across our bow. It was after we sighted the "Selja" that she answered our three whistles.

I saw that there was great danger of a collision and ordered the 2nd Officer to ring the telegraph two

or three times for full speed astern; this was to notify the engineer that I wanted all the power he had to back. Our head was swinging very fast to starboard and I thought we were going to swing clear, but just as we had lost our headway, but had not gathered any sternboard, the "Selja" being in the trough of the swell and our head pointing just forward of his midships, she was lifted on a big swell and carried hard against our stem, and as the "Beaver" came down with the swell, she crashed through the side of the "Selja," going into her about 10 or 12 feet. This was at 3:16 P. M. I stopped the Engines thinking to keep the "Beaver" in the hold, but she *gather* sternway and backed away from the other steamer. I saw that the "Selja" was doomed and sounded the crew to Boat Stations. Boats were all cleared away and two lowered and sent to rescue the crew of the "Selja." Bilges were sounded and fore peak examined, found that ship was not making any water. The S. S. "Selja" sank head first in ten minutes from the time she was struck. She sank in 30 fathoms of water, and when her bow struck the bottom, she was almost straight on end with her stern sticking out of water about 100 feet. Then she gradually turned bottom up and sank. We rescued the Captain's wife and two children and all the crew except two Chinese.

Our boats searched around after the "Selja" sank, not finding the missing Chinese. I ordered the boats back to the "Beaver," had them hoisted on board

and proceeded back to San Francisco, arriving at Pier 40—6:30 P. M.

Yours respectfully,
(signed) WM. KIDSTON,
Master S. S. "Beaver."

Subscribed and sworn to before me O. F. BOLLES, U. S. Local Inspector, at San Francisco, Cal., this 25 day of Nov. 1910.

[Endorsed]: Libelant's Exhibit No. 19. Filed July 20, 1911, Jas. P. Brown, United States Commissioner for the Northern District of California, San Francisco.

[Endorsed on Cover of Transcript of Certain Original Exhibits]: Received Jan. 2, 1914. Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit. By [signed] Meredith Sawyer, Deputy Clerk.